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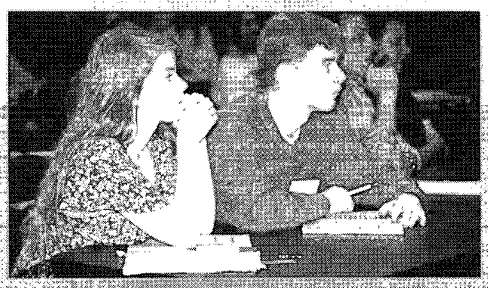

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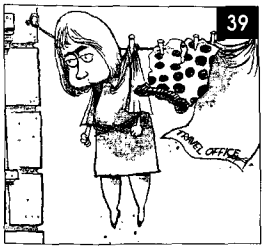

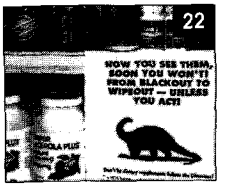

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Cover illustration: Scott Rosema

Reason (ISSN 0048-6906) is published monthly except combined August/September issue by the Reason Foundation, a nonprofit, tax-exempt organization, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034-6064. Second class postage paid at Los Angeles, CA, and additional mailing offices. **POSTMASTER:** Send address changes to Reason, P.O. Box 526, Mt. Morris, IL 61054.

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SUBSCRIPTIONS: $26 per year. Outside U.S. add $8/year surface, $55/year airmail. Address subscription correspondence to Reason, P.O. Box 526, Mt. Morris, IL 61054, 815-734-1102. For address change (allow six weeks), provide old address and new address, including zip code. **UNSOLICITED MANUSCRIPTS** returned only if accompanied by SASE. **INDEXED** in Readers' Guide to Periodical Literature, InfoTrac, Historical Abstracts, Political Science Abstracts, America: History and Life, Book Review Index, and P.A.I.S. Bulletin. Available on microfilm from University Microfilms International, 300 North Zeeb Rd., Dept. P.R., Ann Arbor, MI 48106. **Printed in the United States.**

Looking Forward

By Virginia I. Postrel

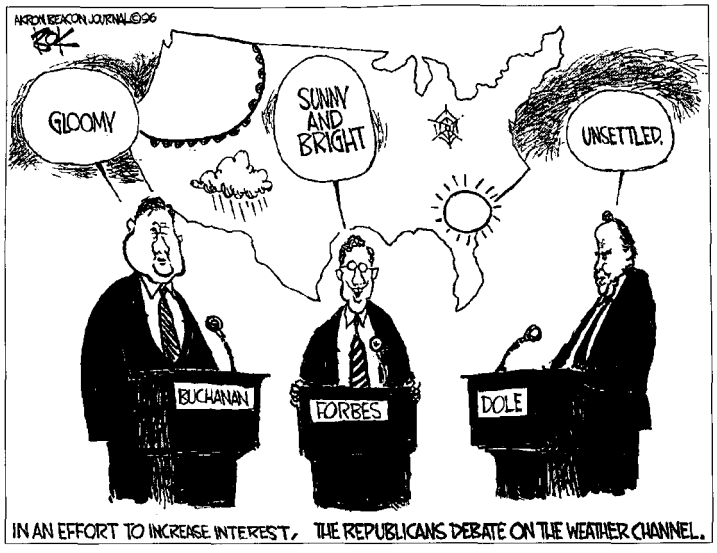
Why Steve Forbes is a serious candidate

ORDINARILY, THE LAST thing I'd choose to write about this month is presidential politics. As I write, the Iowa caucuses are a week away, the New Hampshire primary more than two. As you read, they're history.

Ordinarily, then, I'd stick to what journalists call an "evergreen," a topic that won't go out of date. But the extraordinary candidacy of Steve Forbes demands comment. (Full disclosure: I write a column for *Forbes ASAP*, a role in which neither I nor my articles have any contact with Steve Forbes.)

One thing's for sure: Whatever I say, I won't look as silly as the people who refused to treat the Forbes campaign seriously. Take the political editors at the *Los Angeles Times*. Their series on "The GOP Front-Runners" included Bob Dole, Phil Gramm, Pat Buchanan, and Lamar Alexander, but pointedly omitted Forbes. Asked by *National Journal*'s Paul Starobin to explain, political editor David Lauter lamely replied, "If you really don't think that someone is in this thing for the long haul, it's a little misleading to lead your readers into thinking you do....I don't know anyone who really thinks he's going to be the Republican nominee." Unlike, say, Pat Buchanan or the insiders' idea of an outsider, Lamar Alexander?

Forbes is indeed an unlikely presidential contender. He's never held elective office. He's extremely self-effacing. He's a policy wonk who mentions privatizing Social Security in nearly every speech. He's not good looking. He wasn't born in a log cabin to alcoholic, abusive parents, and he didn't flunk any grades. He's always been very, very rich. And though he's run a successful company, and made it even more successful, he isn't an entrepreneur. It is, the critics snipe, really his daddy's company. (Actually, it's his granddaddy's.)



The media establishment hates the very idea of a Forbes campaign. *The New Republic*'s Michael Lewis fawns over the populist bully Morry Taylor, the other self-financing multimillionaire in the Republican race. But he detests the nerdy Forbes. "He's a real person, and he understands economics," a supporter tells Lewis, who comments, "a pair of facts you might not glean from meeting Forbes."

Introducing a *Nightline* interview with Forbes, Ted Koppel sneers, "You need more credentials to go fishing, drive a cab, or become a plumber than is required in order that you may present yourself as a candidate for the highest elected office in the land." Columnist Charles Krauthammer says it "is a sign of immaturity among conservatives that they're flocking to a complete unknown." *Washington Post* Outlook Editor Jodie Allen says the Forbes campaign shows "the power of poppycock."

I respect both Allen and Krauthammer, but in this case they haven't got a clue. Forbes is not, as Krauthammer suggests, "a complete unknown." He's been on the rubber-chicken circuit for a decade, giving speeches to like-minded groups (including the Reason Foundation in 1988). He writes a column in a biweekly magazine with a circulation of 765,000 and a total audience of more than 4 million. He and his ideas are famous in both the free market and business communities. That Krauthammer finds him "unknown" tells us more about the circumscribed world of Washington punditry—where people take Lamar Alexander seriously but most couldn't tell you who's running IBM or what Sun Microsystems makes—than it does about Steve Forbes. Allen, a Democrat deficit hawk, just doesn't like tax cuts, and when Forbes talks economics, that's all she hears.

FORBES IS FOR TAX CUTS, NO DOUBT about that: "a flat tax with a tax cut." But the power of his campaign doesn't come from a gimmick, however appealing. Richard Lugar, after all, supports scrapping the income tax and replacing it with a national sales tax. Phil Gramm has a solid flat-tax plan and, at least until recently, he also had gobs and gobs of money. Alexander has nothing *but* gimmicks, some of them ideas, some of them —red-and-black shirts, walking across New Hampshire—simply stunts.

No, the flat tax is only part of the

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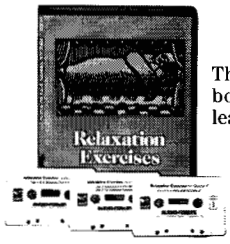

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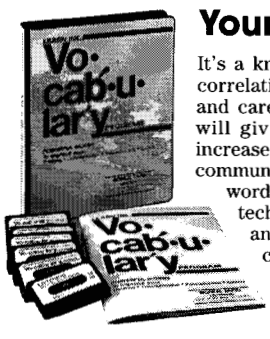

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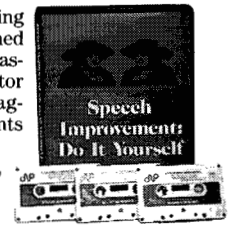

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Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
310-391-2245 Fax: 310-391-4395
http://www.reasonmag.com/reason

Washington Office
1001 Pennsylvania Ave., NW, Suite 200 South
Washington, DC 20004
202-457-8577 Fax: 202-457-8564

Advertising Sales
The Townsend Group, Inc.
7514 Wisconsin Ave., #350
Bethesda, MD 20814
301-215-6710 Fax: 301-215-7704

Circulation Service
P.O. Box 526
Mt. Morris, IL 61054
1-800-998-8989

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Manuel S. Klausner, Tibor R. Machan, Robert W. Poole Jr.

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Forbes story. Forbes's great strength as a candidate—like that of his opposite, Pat Buchanan—is that he defines a clear vision of how Americans can best shape their future.

Asked by a TV reporter, "What kind of person is Steve Forbes?," *TNR*'s Lewis reports, the unlikely candidate gives an unlikely answer: "He's forward-looking, dynamic, optimistic." Lewis moves on, missing the story.

The answer is telling. Forbes may be forward-looking and optimistic, but dynamic he's not—at least not in the usual sense. Five years ago, when Charles Oliver and I met him to do a REASON interview, he seemed almost too polite to introduce himself: the most self-effacing rich guy I've ever met, a contrast not only to his exuberant father but to the typical corporate executive. He warms up when he talks policy, but when it comes to personal dynamism, Steve Forbes will never be mistaken for Alan Keyes.

When Forbes says he's "dynamic," then, he's talking politics not personality. In post–Cold War America, the political-cultural-intellectual landscape is divided not simply between the familiar left and right but between dynamism and stasis. On the side of dynamism are people who embrace open-ended, evolving social and economic systems and an unknown but incrementally improving future. On the side of stasis are those who want to reverse, or plan, or manipulate change.

With his opposition to economic and social change and his consistent harkening back to an imagined past, Buchanan is the purest static visionary in the Republican field. But he's not really alone. Nearly all our political discourse assumes some sort of static, politically directed future. Until Forbes entered the race, dynamism had no clear advocate, no one articulating a positive vision of why the future would be better with a less-intrusive state.

Forbes can legitimately call himself "dynamic" not because he's a rousing speaker but because he believes in the open-ended future, in the creativity of free people, and in the importance of clear, simple, limited rules within which individuals can shape their own decisions. That's what the flat tax is really all about. And it's no accident that Forbes lists "progress," along with freedom, individual opportunity, and equality before the law among America's defining "ideas and ideals." Nor is it a surprise that he attracts supporters who, according to a CNN poll, believe that government should not favor any particular set of values—the state as neutral referee.

BY THE USUAL STANDARDS OF POLITICS, Forbes is indeed advocating "risky ideas," as Bob Dole's TV commercials put it. Instead of promising to eliminate risk by bureaucratic decree, as most politicians do (deceiving both the public and themselves), Forbes prefers to diversify it down to a manageable level. "The nice thing about an open economy," he told us in 1991, "is that you're not dependent on a handful of people doing something right."

None of this makes Forbes either a down-the-line libertarian—he adamantly opposes drug legalization, for instance, and is squeamish about welfare cuts—or the ideal candidate. He's probably overpromising when he says the flat tax will give us 5 percent annual growth and won't depress home prices. And, as his critics love to point out, running a publishing company doesn't mean you can be CEO of the USA. (Of course, neither does running the Senate Republicans or the Education Department.)

Nevertheless, and regardless of how the rest of his campaign fares, Forbes has pulled off an amazing feat. It's hard to talk dynamism in a political world that expects stasis—right down to urging people to calculate their future taxes based on their present circumstances. And it's even harder to convey optimism about the future without specifying exactly what that future should look like. Forbes has managed to do both. ®

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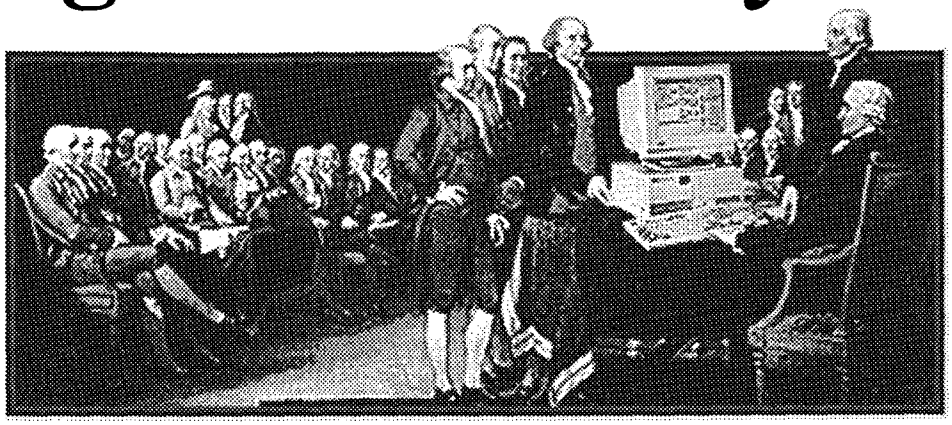

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Duty Free

By Brian Doherty

Art oughtn't kowtow to politics.

IF THE MAJORITY LEADER OF THE SENate condemned the Episcopal Church for doctrinal looseness, we might think it strange. If political pundits concentrated great polemical energy questioning Mormons' claims about their scripture's history, and the Mormons' ethics in spreading such apparent fibs, it might seem curious. If the president made a public proclamation about how potentially dangerous the religious practices of charismatic Christians are, it might seem grossly inappropriate.

We recognize, both constitutionally and in our public mores, that certain aspects of life ought to be beyond political meddling—even beyond political concern.

Yet political commentary recently has been rife with talk of the duty of artists. Bill Clinton and Bob Dole lecture that those who make and sell popular art have a duty to ensure that the art is appropriate for kids. Political pundits harangue film maker Oliver Stone on his duty not to add dramatization to his drama. No one is surprised, since links can be imagined between those statements and seemingly legitimate matters of public policy.

But you don't have to buy into the early modernist conceit of art as the new religion to see dangers in that trend. No, art is *not* the same as religion. But when politics noses in on either, the similarities are more important than the differences.

Both involve the individual's emotional and imaginative life. Both deal with hope, insight, ambiguity, pleasure, and release on levels that politicians not only seem unable to understand, but frankly have no business dealing with.

It isn't that art can't affect the polity. The aesthetic can and does intersect with the political—as, of course, does the religious. No one ever seems satisfied with the results of such intersection. From the comparatively mild problem of using illegal drugs in religious ceremonies to violent confrontations like Waco, experience indicates it might be best for government to keep out of those areas where individuals privately seek meaning, understanding, and pleasure in life.

Anyway, the nature and extent of how art affects people's behaviors and attitudes—the question that Clinton, Dole, and the enemies of *Nixon* seem to think they've answered—is still unknown, and possibly unknowable. Art shows, delights, entrances, suggests—and often bores and annoys. But no clear, unambiguous connection between social decay and dirty pictures, violent music, or historically inaccurate movies has yet been detected. When the social repercussions of an action are as complex and unpredictable as the link between art and the real world, it behooves the government to err on the side of caution—and stay out.

SO GOVERNMENT SHOULDN'T HAVE THE power to enforce aesthetic decisions. Even Clinton and Dole might agree with that—on the surface. But surely one can't object to politicians *talking* about the duties of art to society—bringing the issues to the national conversation through judicious use of the bully pulpit.

Yet the national conversation was humming along just fine before Dole and Clinton butted in with the banal observation that a lot of American popular art deals with adult themes in adult manners. This oughtn't be a shock. America, all evidence to the contrary, is full of adults, and it insults them to demand that all of their pop culture be adulterated so that even the most innocent of children wouldn't be puzzled or discomfited by it.

The reason it's dangerous for politicians even to discuss matters of art and culture is that the self-restraint Clinton and Dole demand won't achieve their goals. Dole asked for self-restraint from Time Warner regarding the naughty rap of its affiliate Death Row Records. Warner dutifully divested its interest in Death Row's parent company, which was then bought by MCA—whose parent company is the Canadian Seagram Co.

So now what? Time Warner behaved like the good corporate citizen Washington demands (with more money than Snoop Doggy Dogg will ever generate at stake with telecommunications deregulation, it wasn't that tough a choice). Now the consumer demand Time Warner met is being served by someone else. Cultural cleansers won't get the art they want by just pandering to the public's supposed elevated taste, implying that only the supply side of sinister smut need be addressed. Plenty of Americans in fact *want* the adult-themed popular art Clinton and Dole condemn.

And that's what makes politicians' complaints about that art especially ominous. Many Americans, both politicians and citizens, can't always distinguish between the law and moral approval. (See arguments about the moral hazards of legalizing drugs or prostitution.) Politicians harping continuously on the evils of popular art sound uncomfortably like the Big Bad Wolf sweet-talking Little Red Riding Hood before leaping to devour her.

I just finished reading what Bill Clinton has alleged to be his favorite novel, Gabriel Garcia Marquez's *One Hundred Years of Solitude*. It has a lot of violence, much incestuous sex, and plenty of anti-capitalism and anti-clericism. I can imagine neither what Clinton might have learned from it nor what he might expect some random child or teenager to learn, or be influenced toward. But it is a fine, detailed, nuanced novel that offers riches above the didactic level to which politicians like to reduce art. Politicians and children are both often strangers to the aesthetic. And politicians' concerns for children shouldn't mess things up for the rest of us adults. ®

Statist Quo

By Rick Henderson

"Big government": more than taxes and spending

TWICE DURING HIS STATE OF THE Union address President Clinton said, "The era of big government is over." Yet the president belied his centrist appeal by recommending a litany of new federal initiatives, from regulations on television programs to tax-funded scholarships for the smartest high-school students. And his remarks clearly demonstrate that the White House and many in Congress willfully ignore a major cause of the growth in government—the expanding regulatory state.

Regulations are, after all, an indirect form of taxation. They force people to change their behavior without paying them for their time and trouble. Some estimates place the cost of federal regulations as high as $900 billion a year—more than half again as much as we pay for federal programs in cold, hard cash. So even if Congress and the president agreed to balance the budget and included a middle-class tax cut in the bargain, without attacking regulations, government will remain as intrusive as ever.

Clinton used his speech to endorse new initiatives that might not cost much money but would make government bigger rather than smaller. His new regulatory programs would generally have three effects:

• *They would limit privacy.* The telecommunications bill Clinton signed in February would force television manufacturers to install an anti-violence "V-chip" in every new set; once the V-chips are activated, government-sanctioned censors, rather than parents, would be in charge of what children can watch. Clinton also asked broadcasters to "improve what our children see on television"—a seemingly harmless suggestion unless you know that Federal Communications Commission Chairman Reed Hundt wants the government to mandate the number of hours and the content of "children's programming" broadcasters must air.

The president also urged the House of Representatives to enact the anti-terrorism bill the Senate passed last year. This bill would dramatically expand the ability of the federal government to tap telephone lines without getting court orders and would (in its current form) define terrorism so broadly that aggressive prosecutors could consider many garden-variety domestic disputes acts of terrorism—a federal crime that offers few due-process protections to the accused.

• *They would restrict legitimate business activities.* The president called for an increase in the national minimum wage, an action that prevents businesses from hiring low-skilled employees to perform entry-level jobs. The president also wants Congress to require broadcasters to either give away commercial time or reduce advertising rates during political campaigns, a proposal some critics have called "food stamps for politicians."

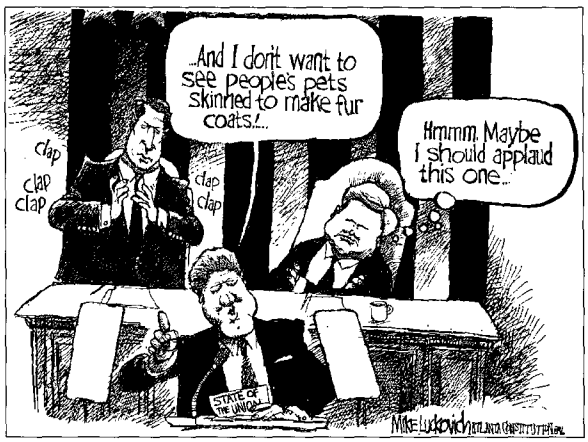
The president encouraged businesses to "find a cheaper, more efficient way than government regulations to meet tough pollution standards." Yet his administration opposes congressional reforms in wetlands and endangered-species protections. Those reforms would give individuals and businesses incentives to preserve private property rather than destroy it or surrender it to government regulators.

• *They would have the federal government usurp state and local authority.* With few exceptions (mainly customs violations and treason), the Constitution makes criminal law enforcement solely the responsibility of state and local governments. Yet Clinton asked Congress to leave in place the 1994 crime bill, which micromanages local law enforcement. He also asked public school systems to adopt national educational standards.

Even the seemingly trivial suggestion the president made to allow public schools to require student uniforms shows an insensitivity to the limits of federal authority. Clinton wasn't calling for Congress to pass any new laws, but his intent was clear: Everything you and your children do is the federal government's business. "The president can't do your children's homework for them," said former California Gov. Jerry Brown during the 1992 presidential campaign. But apparently Bill Clinton thinks he should determine your school's dress code.

To be fair, Congress isn't blameless. Bipartisan majorities support the anti-terrorism bill; Republican senators have joined with Democrats to filibuster regulatory reforms. But all of the deregulatory energy in Washington—in freeing telecommunications, reining in the Food and Drug Administration, and protecting the rights of property owners—has originated from Capitol Hill.

Cutting taxes and balancing the budget are important goals. But achieving both would not necessarily halt the advances of big government. The only sure way to reduce the size and scope of government is to pare back the regulatory state, a task leaders of both parties have failed to encounter head-on. ®


...And I don't want to see peoples pets skinned to make fur coats!...
clap clap clap
clap clap
Hmmm. Maybe I should applaud this one...
STATE OF THE UNION
MIKE LUCKOVICH

MIKE LUCKOVICH

Healthy Debate

Jacob Sullum's "What the Doctor Orders" (January), the most important critique of governmental public health activities we have seen, should be assigned reading in every school of public health. We plan (with REASON's permission) to reprint Mr. Sullum's article in a special issue of our health magazine, *Priorities*, along with commentaries from several public health leaders and, hopefully, a rejoinder by Mr. Sullum. We think the special issue will encourage public health activists to consider the extent to which government health promotion programs can both threaten and enhance individual liberty.

We concur with Mr. Sullum that people engage in various health-compromising behaviors for pleasure, utility, or convenience. However, we don't think this means people, especially children, are necessarily prepared to accept the risks associated with their lifestyles. People tend to succumb to social pressure and impulse in adopting health-compromising lifestyles and then justify their actions by rationalizing about them. This is hardly the libertarian ideal of self-directed, reasoned decision making. Choices made by neglecting likely negative consequences may give some people a sense of "freedom," but how free can someone be who chooses chronic self-destruction?

Educational initiatives that deemphasize mere propaganda and help people learn to make carefully reasoned lifestyle choices may offer more genuine personal freedom than is provided by the simple opportunity to indulge in bad habits without government interference. For example, national dialogue about Surgeon General's reports on smoking has led tens of millions of Americans to modify their lifestyles and improve their lives. Would Americans actually feel more free or live more fully if government stopped addressing lifestyle and health issues altogether?

William M. London
Director of Public Health
Elizabeth M. Whelan
President
American Council on Science and Health
New York, NY

Jacob Sullum's outstanding feature on the public health establishment's imposition of values in the guise of science reminded me of a revelatory conversation I had not long ago. I had been out drinking with a friend, and the bar we were in was unpleasantly smoky. Later that night, my friend was complaining about the residual stink we had absorbed from the bar, and she said that smoking should be banned. I suggested that might be a bit excessive, but she explained her position: "I don't want to have to pay for medical care for all the people who get sick from smoking."

"Neither do I," I replied, "and that's a great reason not to socialize health care."

"But I believe in socialized health care," she responded, although she was visibly uncomfortable with the implication. Responsibility for the consequences cannot long be kept separate from control over the conduct. Wherever the cost of an activity is spread among the public, decisions that were previously private choices made by individuals for themselves are transformed into public decisions made by the political majority for everyone. Freedom gives way to coercion.

When an individual's behavior imposes significant costs on others, fiscal responsibility—and fairness—require that others have the power to regulate that individual's behavior. And of course, regulation inevitably reflects the values of the regulators, not the regulated; indeed, if they converge, regulation is hardly necessary. To wit: My friend and I had been drinking, an activity that imposes costs on others as surely as smoking does. But she didn't advocate banning drinking, because she places a value on that activity, whereas she doesn't understand why anyone would place a value on smoking.

In a free society, the voluntary assumption of risk is a wellspring of progress and pleasure. In a collectivist society, as Mr. Sullum reports, it is a crime. This simple, quotidian anecdote vividly illustrates the eternal truth that whenever government extends an open hand, you can be sure that its other hand is nearby—in a closed fist.

Jeff Bucholtz
Santa Monica, CA

Jacob Sullum's piece hit the target. The health care elite want to substitute absence of "premature death" for freedom as the primary American value. These fanatic crusaders are willing to forsake scientific virtue in their quest to achieve that goal.

A comprehensive 84-page analysis of CDC-funded research appears in "Guns and Public Health: Epidemic of Violence or Pandemic of Propaganda," in the *University of Tennessee Law Review*, 1995. The article is written by two professors at Harvard Medical School, a professor at Columbia Medical School, a professor of biomathematics, and a criminologist. They conclude: "The anti-gun health care advocacy literature...prostitute[s] scholarship, systematically inventing, misinterpreting, selecting, or otherwise manipulating data to validate preordained political conclusions....[these authors] all too often feel no compunction about asserting falsehoods, fabricating statistics, and fal-

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sifying references to counterfeit support for [their anti-gun agenda]."

The result is junk scholarship under the disguise of injury prevention. As that thorough study demonstrates, the health care advocacy literature regarding this public policy issue is fraught with partisan departures from scholarly inquiry. That is why, unlike true scholars, the CDC-funded doctors routinely refuse to make their data sets available to other scholars for comparison and evaluation.

Joseph Olson
Professor of Law
Hamline University
St. Paul, MN

Jacob Sullum responds: I thank Mr. London and Ms. Whelan for their kind remarks, but I have to say that their notion of freedom gives me the willies. In a free society, individuals constantly make choices that seem foolish or short-sighted to observers with different tastes and preferences. Personally, I do not perceive enough benefit in smoking to justify the risk. But I'm sure a lot of smokers would have a hard time understanding why I enjoy bungee jumping. By saying that individuals who defend their "health-compromising lifestyles" are simply "rationalizing," Mr. London and Ms. Whelan imply that such choices are inherently irrational and that people who make them must be ignorant, stupid, or crazy.

It's true that people sometimes regret decisions to engage in risky behavior. People make mistakes in every area of life. In this respect, the smoker with lung cancer resembles the woman who spends her life in a loveless marriage or the retiring CPA who wishes he had become an airline pilot. All three have made decisions that were hard to reverse, with consequences that are now permanent. If people are free only to make careful, reasonable, fully considered choices that they will never regret, they are not free at all.

Gay Rites or Wrongs?

David Link's "Gay Rites" (January) is a fascinating look at same-sex marriage and domestic partnerships. While exceptionally instructive on practical reality, it misses the very real issue of the right of the state to determine what constitutes marriage and what terms legally married individuals will conform to. The very fact that heterosexuals have ceded every one of their rights to make marital arrangements as they see fit should not be seen as a criteria for gays to do the same.

At present all unmarried couples do have legal methods of ensuring their wishes are carried out. These are typically clumsy and somewhat costly and are a problem that legally wed couples do not face. Yet those remedies exist.

Perhaps a lesser role of the state in marriage arrangements would be a better answer for both gays and straights. Given the American propensity to mind the business of others this would be an unlikely proposition. However, it would be an interesting exercise to imagine a world in which lovers actually decided for themselves what best constitutes a blissful union.

Michael R. Snell
Lake Elsinore, CA

"Gay Rites" missed the whole point of why gay couples seek and deserve legal recognition for their relationships. I am a gay man in a stable and long-term but legally unrecognized relationship with another man. My best friend, Jim, is a heterosexual who is legally married to a woman. If Jim and I both have heart attacks, his spouse automatically gets to make decisions but mine may well be excluded from the hospital. If we both die, his spouse automatically inherits and gets his pension benefits but mine doesn't. If we both lose our jobs, he continues to be covered by his spouse's health insurance but I don't. If we are both indicted for a crime, his spouse is immune from testifying against him but mine is not. And finally, his spouse pays no inheritance tax whereas mine will pay through the nose.

Most gay couples frankly don't care about the symbolic, pat-on-the-head social approval that marriage would confer on our relationships. We are much more concerned about taxes, inheritance, insurance, the right to make medical decisions for each other, and so on. Until such inequities are corrected, I don't want to hear one word from the radical right about how gay people are out to get "special rights."

Mel Dahl
Fall River, MA

I was disappointed that your article on gay marriages in Hawaii did not raise the issue of why government should even be engaged in regulating marriages. Marriage is primarily a religious celebration, and a religious rite. As such, government should have no involvement.

Does government have a role in marriage? Only in the realm of contract enforcement, and in protecting the rights and interests of minor children within the family formed by the marriage. This perspective gives an indication of what role government could play: register contracts between individuals, and enforce them. No ceremony need be involved, other than that required for any contract: a signing and witnesses. This would free up religions to do as they wish.

It would also allow for a variety of model contracts from which people could select: a limited partnership for a set period of time, an "at-will" partnership, or a lifetime partnership not terminable except with the agreement of both parties. Or, the participants could write their own contract, or modify a model.

Such a system would allow companies to define for themselves what relationships they wish to fund—or, better yet, eliminate benefits for families, and give all employees an equal wage and let *them* fund their relationships. The more relationships can be removed from social scrutiny, the better off we will all be.

Tom Slaughter
Jackson, MI

David Link responds: A key premise of Michael Snell's argument is that all couples, gay or straight, can ensure their wishes and desires will be carried out, even if the methods are cumbersome. That's not quite true, as Mel Dahl's letter

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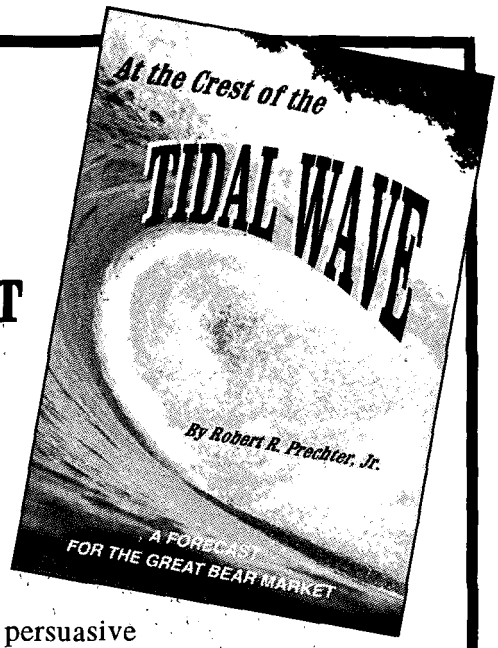

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illustrates. Certainly some of the things Mr. Dahl wants can be accomplished under existing law, such as the right of his partner to make medical decisions for him, or to inherit. Unmarried couples can sometimes get these default advantages most married couples take for granted, depending on the state where they reside. Similarly, some insurance companies do provide benefits for domestic partners. But Mr. Dahl and his partner have a legitimate complaint because they have to depend on the good graces of their legislators and private businesses to achieve an equality that ought to be assumed.

But they have no way at all of "ensuring" (to use Mr. Snell's word) that they can get pension benefits or certain tax breaks unless and until their relationship is given formal state recognition. It is this quality of being locked out that is most frustrating. Benefits are intended to reward couples who proclaim their commitment to one another in what Thornton Wilder called "a mighty public way." Same-sex couples are looked down on because of stereotypes about promiscuity and irresponsibility, and they're—by law—prohibited from doing something that would prove the critics wrong.

I share some of Tom Slaughter's concern about the interrelationships between marriage and religion, more so after discussing the article on a nationally syndicated call-in show and having the Bible quoted to me from five different states. While it's sometimes difficult to separate religious justifications from secular ones, I think it's possible.

And I think we have some awfully good reasons to provide affirmative support for couples who are willing to take the plunge. Or to put it another way, maybe the benefits we get for recognizing relationships are worth the effort. I don't think we need to encourage people to form relationships in the first place, which history and biology both suggest they will do irrespective of what the law says or does. The hard part is usually staying together, and while neither tax breaks nor tort law will be the deciding factor for most couples, I think there's something profoundly good about a society that says we not only value commitment in the abstract, but are willing to put our money where our values are.

Some of those values are enshrined in the Constitution itself. In December, the federal Court of Appeals decided *Shahar v. Bowers*, mentioned in the article. While the three-judge panel disagreed on some matters, they were unanimous in holding that same-sex couples, like opposite-sex couples, have a constitutionally enforceable right to intimate association that protects them against government intrusion.

The Case of Race

I want to congratulate you on your editorial on race, "Race to the Bottom" (December 1995). I have been quite disturbed by the racial overtone that has surfaced within conservative, and I should add libertarian, rhetoric in recent years (especially from the paleo-libertarian crowd). The critique of government race-based public policy must not be confused with racial intolerance. I appreciated your call for a consistent liberalism that celebrates the virtues of tolerance and the cosmopolitan vision that sustains the social cooperation of the liberal order.

Peter J. Boettke
New York, NY
Boettke@fasecon.econ.nyu.edu

It is indeed, as Virginia Postrel in her December editorial points out, "hard to lead a crusade for treating people as individuals when you're busy lumping them together by race." Her point is absolutely fundamental, and I have seen it made nowhere else. Conservative colorblindness rhetoric is often greeted with deep skepticism, and Ms. Postrel tells us why: Colorblindness advocates too frequently "wallow in stereotypes and omit countervailing experience." They complain that group-obsessed liberals are blind to individuality, but, in fact, it's an infirmity that crosses ideological lines.

Racial equality in American society awaits the day when blacks as well as whites are seen as individuals. The categories appropriate to a caste system that racial stereotyping creates are a poor basis on which to build a community of equal citizens. If conservatives want to shed their reputation for racism, it's a point they need to understand.

Abigail Thernstrom
Lexington, MA
thernstr@husc.harvard.edu

Virginia Postrel, relying on Dinesh D'Souza's luridly distorted account of the 1994 American Renaissance conference at which I was a speaker, refers to me (along with columnist Samuel Francis) as an "overt white racist," without bothering to give a single example of my "racist" beliefs. Presumably Ms. Postrel makes this damaging but unsubstantiated charge because I argued at the conference that there are "large and enduring differences in average intelligence between blacks and whites," resulting in different levels of civilizational abilities. D'Souza himself specifically defines racism as the belief in such racial differences.

However, D'Souza's definition of racism is profoundly misleading. It makes racism sound like an intellectual or scientific theory, whereas in actual usage (including D'Souza's or Postrel's) to call something "racist" is to say that it is *morally bad*. These meanings contradict each other.

An idea stating a possible fact, whether it is the existence of gravity or the existence of inherited group differences in intelligence, cannot be morally bad, though it may turn out to be false. An idea can only be bad if it is knowingly false and hurtful. To take an extreme example, the statement "Group X are devils are created in a laboratory 5,000 years ago by a mad scientist" (which is what the Nation of Islam teaches about whites) is so implausible that the speaker must know it is not true. This suggests that his motivation is not to arrive at truth but to dehumanize Group X.

Based on the above, I'd like to propose what I think is a coherent and useful (though not exhaustive) definition of racism. A person is being racist if he 1) at-

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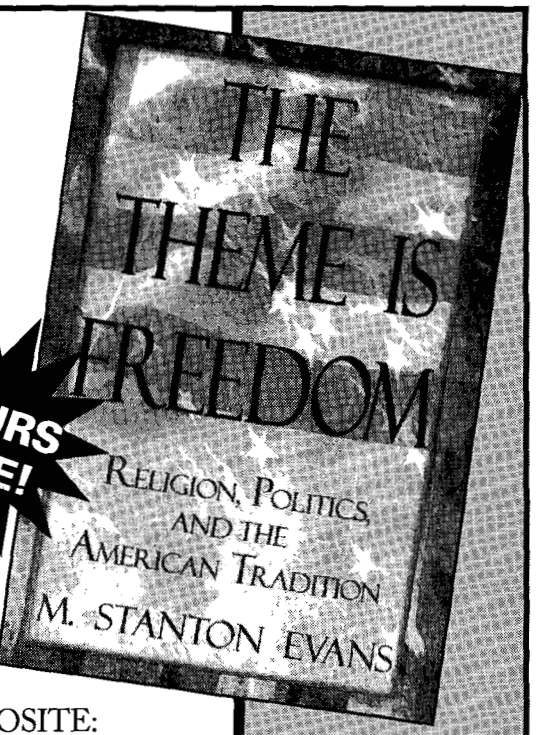

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tributes a negative trait to an entire group; 2) does this out of ill will; and 3) is indifferent to evidence. By this definition, Ms. Postrel has the right to argue that assertions of racial differences in intelligence are untrue or socially harmful, if that is what she believes. But (lacking proof of either ill will or indifference to evidence) she does not have the right to call them racist.

Lawrence Auster
New York, NY

After reading Virginia Postrel's editorial, I went back to reread the Dinesh D'Souza articles she mentioned. The charge that "they seem designed not to elucidate the complexities of race in America but to justify readers' preconceived notions of black inferiority" is not only insulting to the editors and readers of *The American Spectator* and *National Review*, but, more importantly, is without basis in fact.

The *National Review* article "Myth of the Racist Cabbie" in particular discussed the critical observation that people of all races let racial stereotypes play a role in their treatment of other people (even people of their own race), and the article attempted to address why this is true. Although you might with some cause ridicule at least one of D'Souza's illustrations of stereotypes with "an empirical basis in shared experience," you never addressed his arguments about the public's common use of racial stereotypes, nor did you bother to suggest any source for the stereotypes other than the one D'Souza suggested.

Even in *The American Spectator* article, D'Souza raises the important question of how many of black Americans' problems are self-imposed by the lifestyles they choose to follow rather than externally imposed by white racism. Complaining about the lack of balance in his portrait of black Americans' culture totally misses the basic problem with his article—that is, that he simply assumes that a common culture is shared by all black Americans. Rather, to the extent that black Americans share common life experiences, most of these experiences largely stem from the common American culture in which all of us participate and contribute regardless of race. To the extent that many black Americans share the pathologies and dysfunctional characteristics about which D'Souza writes, these problems are largely the product of a drug-infested, violent subculture whose nucleus is certainly in the black lower class but whose scope clearly encompasses many Americans (including whites) outside that population segment.

Ms. Postrel writes, "You cannot get to a colorblind society by constantly reinforcing racial categories." True. But one also cannot get to a colorblind society by ignoring inconvenient facts and black Americans' problems, like the lack of academic ambition in many of their children. I must say that I laughed out loud at the suggestion in Ms. Postrel's editorial that attending Harvard University is part of "the black experience." (It is not even part of the white experience.) Perhaps she should join me at the convenience/liquor store near my old residence in Inglewood one evening. She will find remarkably few Harvard graduates loitering around its parking lot. She will unfortunately find all too many examples of people exhibiting the dysfunctional behaviors about which D'Souza writes.

Instead of acting indignant about D'Souza's articles and the magazines which published them, you should view the articles as merely a new contribution in a frank public dialogue about race and race relations—a dialogue which cannot be free of error or of giving offense because of human fallibility and the nature and complexity of the subject. Without the social liberty to participate in such an open and honest discussion, better long-run understanding cannot occur between the races, and a truly colorblind society in America will remain an elusive dream.

Carl L. Brodt
Columbus, OH

Virginia I. Postrel complains that the portions of Dinesh D'Souza's *The End of Racism* excerpted in *National Review* and *The American Spectator* omit the "countervailing experience" found in the excerpt published in *The Washington Post*, which thoughtfully includes "critical portrayals of overt white racists." She rudely suggests that the readers of *National Review* and *The American Spectator* are racists by saying that the mention of white racists "would have undoubtedly disturbed their readers."

As a regular reader of both REASON and *The American Spectator*, I am offended by Ms. Postrel's comment. Although we *Spectator* readers may prefer bourbon to white wine, we are just as aware of racism (white, black, and otherwise) as she is. I read the excerpt published in the *Spectator* and did not find a single factual error or misstatement. Nor, apparently did Ms. Postrel, since her whole gripe seems to be based on the fact that D'Souza presents examples of black hoodlums without balancing them with examples of black actors, servicemen, or data processors.

Of course D'Souza shows only one side of the story: This short section of his article is concerned with the pathology of black criminals, not with the hagiography of black choirboys. Ms. Postrel seems to believe that the only proper discussion of race is one that places a nice smiley face beside each frowny face.

Harvey Click
Columbus, OH

Ms. Postrel replies: I appreciate the comments of Peter Boettke and Abigail Thernstrom, both of whom restate nicely the main point of my article: that it is difficult, if not impossible, to advance the cause of individual treatment while reinforcing racial categories.

Mr. Auster's letter illustrates why I generally steer away from the term *racism*, which means related but different things to different people. I do think his requirement of acknowledged ill will goes beyond most people's use of the term, as does the leftist definition that requires political power (thereby absolving members of minority groups of racism). He also omits perhaps the most important components of racial bigotry: the assumption

that the bigot is, by virtue of his or her race, superior to members of the inferior race.

Since I was not present at the conference in question, I cannot vouch for Mr. D'Souza's account of it (though subsequent quotes from Sam Francis in newspaper articles on his firing by *The Washington Times* convince me that he, at least, merits description as an overt white racist). At any rate, it was that account—and the absence of such acknowledgement of white racism from conservative discussions of race—that interested me. White racism, however defined, is not as pervasive as the left might have us believe. But it does exist, and not always in subtle forms.

Mr. Brodt's letter, while it contains some good points, also illustrates the problem of embracing racial stereotypes. In defending the rationality of stereotypes, Dinesh D'Souza not only suggests (as I mentioned in my editorial) that it's rational to think Jews are conspiring to take over the world—an idea I sincerely doubt he believes—but also that Hispanics (read: Mexicans, the actual stereotype) are lazy. This ancient stereotype defies any rational basis, since it is refuted by both statistical measures and casual observation; based on what anyone living in Southern California sees every day, "shared experience" would lead us to conclude that Hispanics are workaholics. Yet it is the laziness stereotype that Mr. D'Souza winds up defending, because the logic of his argument that essentially all stereotypes are grounded in reality leaves him with no alternative to doing so.

Clearly, something more complicated than simple experience is at work in producing stereotypes. History plays a role, as do group rivalries. How we generalize from our experience is warped by systematic biases, as a large body of work in social science having nothing to do with race suggests. And the lopsided numbers of whites and blacks in America can skew experience. Yet conservative writers on race, of whom Mr. D'Souza is only one example, are rewarded for eschewing any such complexities in favor of a simple de-

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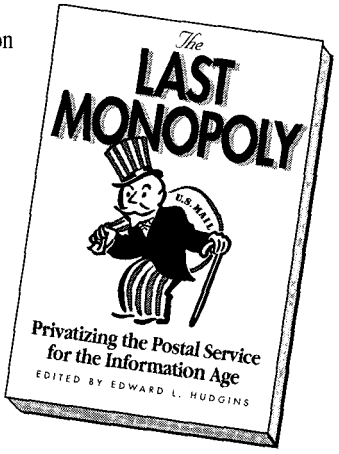

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fense of prejudice.

My point was not, as Mr. Brodt and Mr. Click suggest, that articles about race should be "balanced," in the ping-pong style so popular among newspaper journalists covering public issues. Rather, I would like to see the very distinctions Mr. Brodt himself makes—that there is not a single black culture in America, that black Americans participate in and help shape our common culture, that social pathologies are not limited by race—not only nodded to but internalized by policy analysts who say they advocate a colorblind society.

It is, of course, wrong to conclude that graduating from Harvard is typical of any race. The point Leonce Gaiter, whom I quoted, was making is that *his* experience, which includes a Harvard degree, is as authentically "black" as that of the gangster Kody Scott, a popular black exemplar for both liberals and conservatives. In fact, neither man's experience is typical, but Scott's is very often portrayed so. And Gaiter rightly objects to being lumped in with criminals on the basis of his race. A "frank public dialogue" would not exclude his position, his experience, or the law-abiding—and quite ordinary—lives of Scott's siblings, the "black actors, servicemen, or data processors" to whom Mr. Click refers. Their lives, not encounters with white racists, constitute the "countervailing experience" omitted from too many conservative discussions of race.

The alternative to portraying blacks as criminals (or, to take another example, men as rapists) is not hagiography or smiley faces. It is subtlety, individuality, and a willingness to challenge comfortable assumptions. This last goal might have been served had Mr. D'Souza's *Washington Post* piece appeared in *National Review*, and his *NR* piece in the *Post*. Instead, each publication's readers simply had their prejudices confirmed, their political world view undisturbed. That's a good way to avoid angry letters to the editor, but it's not especially helpful in moving America toward an honest, as opposed to merely nasty, discussion of race.

Shooting Back

I thank REASON for reviewing my recent book, *The Politics of Gun Control* ("Shooting Gallery," December). But your reviewer Jacob Sullum perpetuates an array of common errors often found in the gun debate. For example, he considers significant the fact that "a number of liberal constitutional scholars" say that the Second Amendment "is not null and void." Not only is the liberal label those analysts apply irrelevant to their analysis, Mr. Sullum undercuts his own credibility by giving such credence to self-identified liberals.

Mr. Sullum also disputes my dismissal of the 1857 case of *Dred Scott v. Sandford*, insisting there is value in the case's passing reference to keeping and bearing arms. Bearing in mind that the old-style militias still existed in the pre–Civil War era, *Dred Scott* was overruled by constitutional amendment after the war. Yet even if it were still good law, it was not a Second Amendment case; moreover, the reference was dicta, not law. It is therefore an irrelevancy. On the other hand, Mr. Sullum ignores what is relevant—four Supreme Court cases and over a dozen lower federal court cases—that confirm that the Second Amendment pertains only to service in a government-organized and regulated militia. This is one controversy that has been long settled.

Finally, my book does not give "short shrift" to opposing views, but rather offers the most comprehensive look at the subject to be found in print. By accepting the hunting and sporting tradition, I make clear that I oppose "disarm[ing] gun owners." The whole basis of my argument is that gun control gridlock can only be broken when a pledge to oppose disarmament by control supporters is met with a reciprocal pledge from control opponents to accept a limited degree of arms control. Most of the nation's gun owners already support such a proposition.

Robert J. Spitzer
Professor, Political Science
SUNY Cortland
Cortland, NY

Jacob Sullum responds: The fact that some eminent constitutional scholars who were predisposed to be skeptical have embraced the individualist understanding of the Second Amendment is not decisive, but is intriguing. A person of ordinary curiosity would want to know what evidence and arguments convinced them. Similarly, *Dred Scott v. Sandford* does not settle the issue, but it gives some indication of how leading 19th-century jurists viewed the right to keep and bear arms. (In this connection, Professor Spitzer still seems confused by the distinction between citing the case as a binding legal precedent and citing it as historical evidence.) As for the Supreme Court cases that deal more directly with the Second Amendment, Professor Spitzer is well aware that their meaning and relevance are matters of dispute. Even if the Court had clearly and unequivocally declared the Second Amendment a nullity, we could argue about whether the case was properly decided. But as his reference to the Flat Earth Society makes clear, Professor Spitzer is unwilling to concede that his opponents have something worthwhile to say. In this context, his call to compromise—based on the reassurance that "we have the right to disarm you, but we won't"—is a non-starter.

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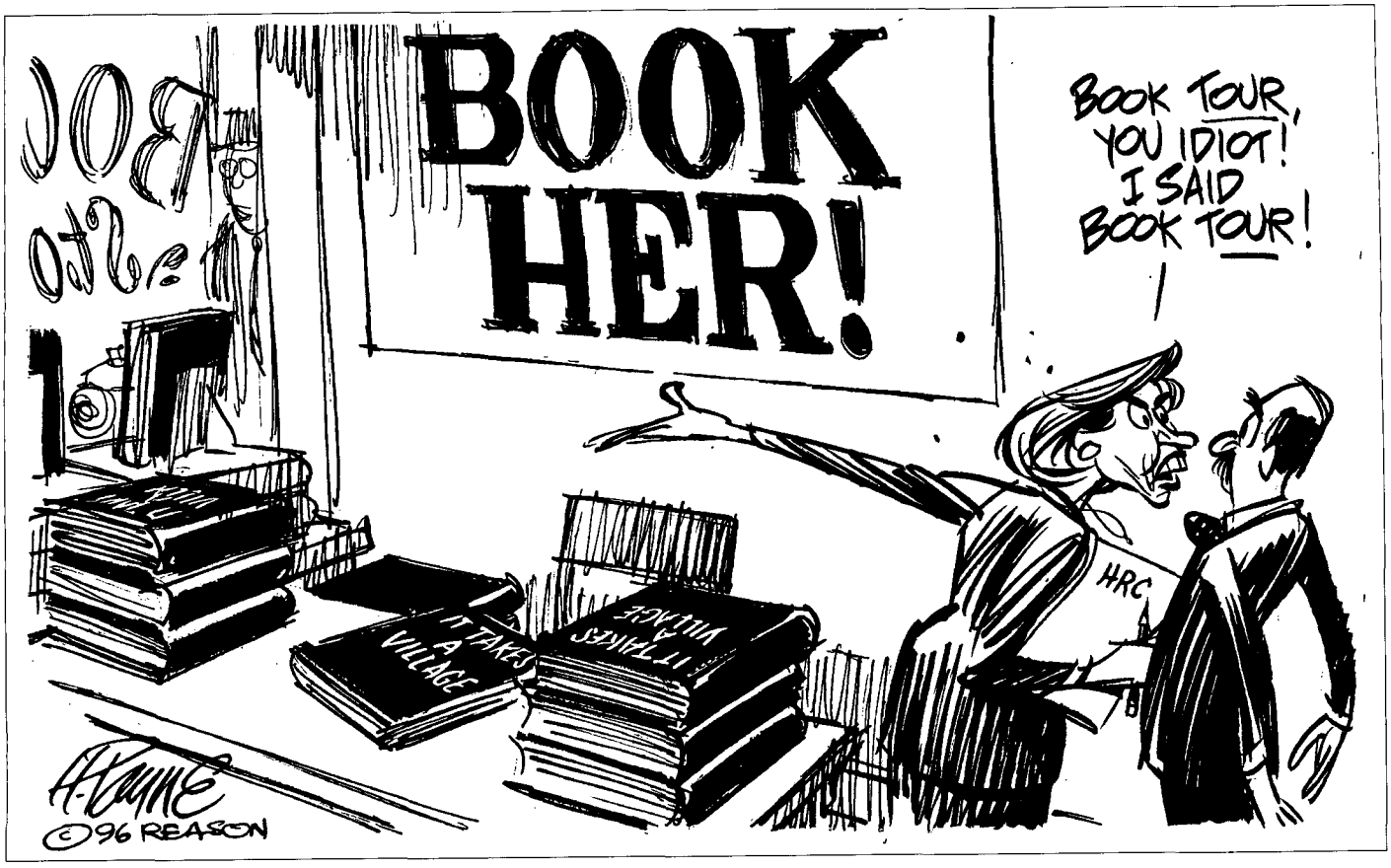

HENRY PAYNE

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REASON '96

CHIP BOK

■ **Barry Som pleaded guilty to welfare** fraud. He allegedly cost the state of Washington and the federal government hundreds of thousands of dollars. Naturally, he was fired from his job with the state Department of Social and Health Services. So Som did what many people without a job would do: He applied for unemployment benefits. He's now collecting $300 a week.

■ **Buffalo Grove, Illinois, is renaming its** Adopt-A-Hydrant program. The town had offered adoption certificates to children who agreed to keep a hydrant clear of weeds and ice. But Gerald and Maureen Knight were outraged that anyone would equate adopted children with something that dogs take a leak on. So they protested, and the city agreed to find a new name for the program.

■ **Toni Marie Angeli was taking a photography** class at Harvard University, and she decided to take photos of her 4-year-old son for a class project on "Innocence in Nudity." Unfortunately, a staff member at the Zona Photographic Laboratories, where Angeli took the photos to be developed, has a hard time seeing any innocence in nudity. When Angeli went to pick up the photos, she was arrested by police, who'd been called by the lab. After the district attorney and the state Department of Social Services looked at the photos, they decided they weren't done with lascivious intent. But Angeli still faces charges. When she was being arrested, she allegedly threw a lamp at a lab worker. Angeli has been charged with assault and battery, malicious destruction of property, and disorderly conduct.

■ **Baltimore police stopped a teenager** for joyriding. They handcuffed him and forced him to lie face down on the pavement while they loaded his passengers into a police van. They then ran over the teenager, whom they had forgotten about. He was not seriously injured.

■ **Vikki Read wasn't allowed to take her** 9-day-old baby into a museum in Wellington, New Zealand. Why? The museum was showing the photos of Robert Mapplethorpe, including several nudes, and prosecutors had threatened to go after the museum if any kids were exposed to the pictures.

■ **When Pensacola, Florida, native Scott** Plumley spotted people dealing drugs, he decided to do something. So he called the sheriff's office. But they told him that he'd have to have proof that drugs were being sold before they'd come out. So Plumley went and bought a $4.00 bag of marijuana. He then called back to tell deputies what he'd done. The cops came quickly this time, and arrested Plumley for possession.

■ **Mary Ann Gardner asked her husband** Richard to fix some hallway molding in her mother's home. When he couldn't push it into place with his hands, he did what any blithering idiot would do: He got his gun. He attempted to use the butt of a .25-caliber handgun to hammer the molding back into place. While he was hammering away, the gun went off, shooting Mr. Gardner in the hand and his wife in the abdomen. Neither was seriously hurt.

■ **It seemed like a cute T-shirt: a cartoon** of Margaret from the "Dennis the Menace" comic strip saying "Someday a woman will be PRESIDENT." But some Wal-Mart customers didn't agree, and after they complained, the chain removed the shirts. Designer Ann Mollivar Ruben said a company buyer told her the shirt's message "goes against Wal-Mart's family values." Now, after a counterprotest by women's groups, the shirt is back on Wal-Mart shelves.

■ **Human Rights Watch recently revealed** that children in Chinese orphanages routinely die from deliberate neglect and starvation. One of the chief witnesses for their report is Dr. Zhang Shuyun. She's safely out of China now. Unfortunately, her family isn't. After the report came out, Chinese authorities arrested her brother, a local government official and member of the Communist Party, for subversion.

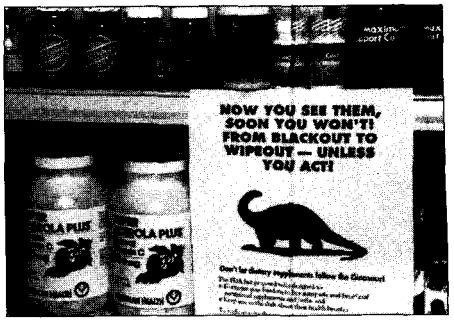
■ **In Williamsburg, Virginia, Shane Em**mett faces expulsion from Lafayette High School for violating the school's ban on weapons. Seems authorities noticed a toy dart gun in his car.

—Charles Oliver

To Tell the Truth

Challenging FDA censorship

By Jacob Sullum



IF YOU SELL NUTRITIONAL SUPPLEMENTS in the United States and you want to tell consumers about the benefits of your product, you have to get permission from the Food and Drug Administration. There are thousands of true statements you could make about the health effects of nutrients, but the FDA has approved only two: that calcium helps prevent osteoporosis, and that folic acid reduces the risk of neural-tube birth defects. Both claims were approved years after they were widely accepted by the scientific community.

In the nine years it took the FDA to approve the calcium claim and the three years it took to approve the folic acid claim, thousands of people suffered from osteoporosis and thousands of babies were born with neural-tube defects. Durk Pearson and Sandy Shaw, who design dietary supplements and license manufacturers to produce them, note that many of these cases might have been prevented by information the FDA blocked. Alarmed by the harmful and potentially deadly consequences of the FDA's labeling restrictions, Pearson and Shaw are challenging the agency's censorship in federal court.

Pearson and Shaw want to label their products with truthful statements based upon substantial scientific evidence, such as:

- "Consumption of antioxidant vitamins in the amounts contained in this product may reduce the risk of certain kinds of cancers."
- "Consumption of 25 to 35 grams per day of dietary fiber may reduce the risk of colorectal cancer."
- "Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease."

Despite the cautious phrasing, the FDA considers such statements misleading, since the evidence supporting these associations is not conclusive (as Pearson and Shaw concede). The agency requires "significant scientific agreement" before approving a health claim, a standard it defines "on a case-by-case basis."

Represented by Washington, D.C., attorney Jonathan Emord, Pearson and Shaw argue that the FDA's rules amount to prior restraint and violate the commercial speech doctrine. They add that the restrictions are in any case too broad, since they apply not only to labeling in the narrow sense but also to books, scientific articles, or summaries of research displayed or distributed near dietary supplements (in a health food store, for example). They charge that the lack of a clear standard for approving health claims violates both the Fifth Amendment's Due Process Clause and the Nutrition Labeling and Education Act of 1990.

Pearson and Shaw first filed their suit in the U.S. Court of Appeals for the Ninth Circuit, which decided it did not have jurisdiction. Commenting that the "petition is far from frivolous," it referred the case to the U.S. District Court in Washington, D.C., which is scheduled to hear oral arguments on April 30. ®

Measure for Measure

Ranking countries' economic freedom

By Ed Carson

Free market supporters say economic freedom is necessary for economic prosperity. But until recently no one had tried to define or measure it.

Now two reports are attempting just that: *The 1996 Index of Economic Freedom*, published by the Heritage Foundation—which first published the economic index in 1995—and newcomer *Economic Freedom of the World: 1975–1995*, co-published by the Vancouver-based Fraser Institute and 10 other institutes worldwide.

The Heritage index uses 10 unweighted factors to measure 142 countries. Fraser's employs 17 weighted factors to rank 102 countries. Hong Kong and Singapore finish numbers 1 and 2 and the United States makes the top 10 in both.

The respective authors are quick to criticize the other index's data and methodology. But the indexes were created for different audiences. The Heritage index is deliberately user-friendly, intended for the politicians and reporters who shape public policy. Fraser's is designed more for academics interested in calculating the relationship between economic freedom and affluence.

Top ten most economically free countries

Heritage Index (142 countries)	Fraser Index (102 countries)
1. Hong Kong	1. Hong Kong
2. Singapore	2. Singapore
3. Bahrain	3. New Zealand
4. New Zealand (tie)	4. United States
Switzerland	5. Switzerland
6. Netherlands	6. Malaysia (tie)
7. United States	United Kingdom
8. Denmark (tie)	Thailand
Luxembourg	9. Canada (tie)
Taiwan	Japan
United Kingdom	

Sources: *1996 Index of Economic Freedom*, The Heritage Foundation; *Economic Freedom of the World: 1975–1995*, The Fraser Institute, Cato Institute, et al.

O Canada!

Our northern neighbor privatizes its air traffic control system. But privatization plans are still circling Washington.

By Ed Carson

THE CANADIAN GOVERNMENT—fresh from privatizing the Canadian National Railway—is selling the nation's air traffic control system to the airline industry for 1.5 billion Canadian dollars (US$1.09 billion). The deal is similar to proposals to spin off the U.S. air traffic system, but so far those plans are just getting stale.

On April 1, the Canadian government will transfer all air navigation operations, equipment, and employees to a new company, Nav Canada. The nonprofit company, comprising Canada's major airlines, private aircraft owners, the pilots union, and the air traffic employees, will rely completely on user fees to meet operating costs. Profits will be used to modernize the system. The government had been running annual deficits of CDN$200 million on the system.

Other countries, notably Germany and New Zealand, have turned their air traffic systems into government corporations. But Canada is the first country to go through with full privatization.

In Washington, the Republican congressional leadership has endorsed full privatization, and President Clinton has proposed turning the system into a government corporation. But no privatization of any kind ever left the House Transportation Committee. Instead, Congress exempted the Federal Aviation Administration from federal procurement rules.

The official story is that Transportation committee members believed the Congressional Budget Office's estimate of the government's take from selling the ATC system wasn't firm enough or high enough to justify the sale. The original CBO estimate was $18 billion, but technical changes in the model used to score the savings cut that to between $6 billion and $7 billion. Also, committee members were concerned that airline crashes in the future would be blamed on privatization.

But privatization is expected to improve airline safety. The FAA would still control and oversee airline safety regulations. And a private corporation—using debt financing and savings from making the system more efficient—would be able to upgrade the aging air traffic system, which is still using computers with vacuum tubes and has been plagued by power outages in recent months. During a six-minute control tower power outage at Pittsburgh International Airport on January 31, an air traffic controller had to use a pay phone to call other airports and tell them to hold flights to Pittsburgh.

The nonprofit company also could set salaries to entice the best personnel to our busiest airports. Uniform government salaries currently make high-cost-of-living cities such as Chicago and New York less attractive for controllers.

Political pressure, particularly from the general aviation community, was really what grounded privatization, says a Hill staffer concerned with privatization issues. He says the Aircraft Owners and Pilots Association is known on Capitol Hill as "the National Rifle Association of the skies." Private pilots are generally affluent, they reside in every congressional district, and a number of congressmen are private pilots themselves. The lobby opposes privatization because currently private pilots don't pay their full share for air traffic services.

The U.S. air traffic controllers union also opposed privatization, but their Canadian counterparts are eager to leave government service. And why? All 6,400 workers will keep their jobs at current salaries *and* receive 24 weeks severance pay worth an average of CDN$27,000 (US$19,620) the day the air traffic control system is transferred to the nonprofit corporation.

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Balance Sheet

By Rick Henderson

Assets

Truce. *National Review*, the self-proclaimed "keeper of the conservative tablets," calls for an end to drug prohibition. The editors support tough sentences for dealing drugs to minors but otherwise "agree on movement toward legalization, even though we may differ on just how far."

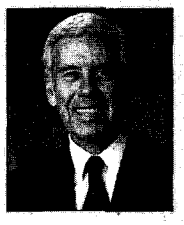
Center Cuts. In 1995, New Jersey enacted Gov. Christie Todd Whitman's 30 percent tax cut a year earlier than promised. This year, the moderate chief executive offers a budget with real spending cuts. The state government will spend $16 billion—$124 million less than last year. Whitman will cut subsidies to state universities, place time limits on welfare, and require wealthy seniors to pay more for subsidized medicine.

Sharing Wealth. Forget envy-inspired stereotypes of the greedy rich. Using Federal Reserve data, a study by Boston University sociologists Paul Schervish and John Havens suggests that as people get richer, they also become more generous. Households with incomes of $100,000 gave 2 percent of their incomes to charity. Those who made between $100,000 and $150,000 gave away 3.6 percent. And people making $1 million or more donated 4.9 percent of their earnings.

Travel Glide. France bids monopoly air fares adieu. Domestic airline deregulation commenced January 1, one year before the European Union deregulates fares across the continent. Since lifting restrictions on French carriers, prices have plummeted: *Aviation Week & Space Technology* says the fare along the busiest route, from Paris to Nice, has dropped by more than half, to $138.

Liabilities

Kernel Klink. If you can't beat 'em.... Last year, Senate Agriculture Committee Chairman Richard Lugar (R-Ind.) unsuccessfully tried to abolish farm programs within five years. Now Lugar sponsors the Popcorn Promotion, Research, and Consumer Information Act, a bill that would establish a Popcorn Board funded by taxes on growers and processors. No vote was scheduled before the Iowa caucuses, but if Congress moves fast, we may have price supports in place before the NBA Finals.



Hot Hype. Despite headlines in *The New York Times* and *Newsweek*, 1995 was *not* the warmest year on record. Global-warming alarmists raced to press without including data from frigid December, when we shivered through the biggest one-month temperature drop in 17 years. Including all the data, 1995 was only the eighth-warmest year recorded. University of Alabama-Huntsville atmospheric scientist John Christy tells *The Washington Post* that '96 should be even cooler.

Crash Victims. In 1991, Rebecca Ann Tebbetts died in an auto accident. Her family believes air bags—which weren't available in a 1988 Escort—would have saved her life. The car did have automatic seat belts, and air bags won't become mandatory until 1998, but no matter. The Supreme Court says the Tebbettses can sue Ford because it didn't install every conceivable safety feature in all its cars. Which section of the Constitution makes judges automotive engineers?

Credit Trap. Bill Clinton, January 23: "The era of big government is over." January 30: Al Gore negotiates a $9 billion taxpayer-backed Export-Import Bank "loan" to Russia. To sweeten the deal, an extra billion will go to the Aeroflot airline so it can buy jet engines from United Technologies. Most likely, Russia will never repay a dime. Would have been cheaper (and more honest) to bypass the Ex-Im Bank, ship the engines directly to Aeroflot, and have Uncle Sam write United Technologies a check.

Common Causes

Bigger government equals more money spent on campaigns.

By Brian Doherty

TWENTY-TWO YEARS AFTER THE first big federal law controlling campaign financing was passed, the problems it was supposed to address are worse than ever. Incumbents are re-elected at ever greater rates—even in the "revolutionary" election of 1994, 91 percent of the incumbents standing won re-election. Money spent on campaigns still rises—spending on federal legislative campaigns has increased an inflation-adjusted 180 percent since 1976. Special interest influence over the electoral process seems no less powerful than it ever was.

But any proposed reform that further restricts individuals' ability to spend money as they choose on campaigns is attacking the symptoms and not the cause, argues a new study from John R. Lott Jr., a law and economics fellow at the University of Chicago Law School.

Lott found that the most convincing explanation for rising campaign expenditures is rising *government* expenditures. When the prize gets bigger, people will expend more energy on the contest to win it. In fact, after analyzing data from decades of federal and state legislative campaigns, and gubernatorial campaigns, Lott says the real conundrum is why campaign expenditures are as *small* as they are, given what's at stake.

Lott performed mathematical analyses on campaign spending data compared with government spending levels for the relevant offices, as well as other possible causes of increased campaign spending. "The bottom line is, even when you control for all the other possible effects, between 60 and 80 percent of the growth across time in campaign expenditures can be linked with increased government spending," Lott says. "The irony is that many of the same people complaining about campaign spending also tend to want larger government." ®

Alien Notion?

Before reforming immigration, a new report argues, replace the INS.

By Rick Henderson

CHIP BOK

As Congress considers new immigration laws—possibly including big cuts in legal immigration and the imposition of national identity cards—a January policy study by Washington's Center for Equal Opportunity urges caution for an unexpected reason. The report, "Abolish the INS: How Federal Bureaucracy Dooms Immigration Reform," says the agency can't perform its responsibilities now. Giving it more authority would be pointless.

Since 1940 the INS has been a part of the Department of Justice. Its 21,000 employees work in Washington, 33 district offices, and four service centers; they constitute nearly 20 percent of all DOJ personnel. The agency's budget has more than doubled this decade, from about $1 billion in fiscal year 1990 to $2.6 billion this fiscal year. Two additional cabinet agencies—the Department of State and the Department of Labor—handle essential immigrant services. Potential immigrants must get approval from both the INS and the State Department before relocating here; the Labor Department must verify that companies wanting to hire immigrants aren't refusing to give qualified Americans the same jobs.

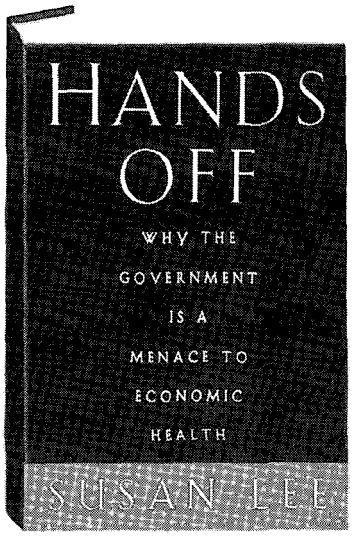
CEO legal adviser Daniel W. Sutherland, who authored the report, says the INS is "inherently incapable of performing the duties it already has, let alone taking on new duties." Inconsistently applied enforcement policies, turf wars between district offices, and obsolete information systems plague the agency.

For instance, an Alabama employer that incorrectly filed paperwork on new employees was fined thousands of dollars while an Ohio company that made the same mistakes got off with no more than a warning, reported a RAND Corporation/Urban Institute study. The agency also forfeits nearly $30 million a year by not demanding the payment of fees that are collected by airlines from international travelers and by bail bondsmen in deportation cases.

In part, Sutherland says the agency's problems stem from its conflicting missions: enforcing the laws against illegal immigration while assisting legal immigrants who want to become citizens and people here on temporary visas. The INS is in the uncomfortable business of simultaneously helping some people get into the country and tossing others out.

Yet the immigration bills pending on Capitol Hill would give the INS even more responsibilities. "Without comprehensive structural reform of the federal immigration bureaucracy," says the report, "billions of dollars in new spending on immigration will be wasted and new responsibilities will go unfulfilled."

Sutherland suggests closing the INS and reassigning its functions. A new Federal Immigration Agency would perform all naturalization services, including those done by the State and Labor Departments. All enforcement duties, including those of the Border Patrol, would shift to the Customs Service, making the same agency responsible for regulating both incoming people and incoming products. He also recommends having the FIA hire private companies for such jobs as fee collection and document preparation. R



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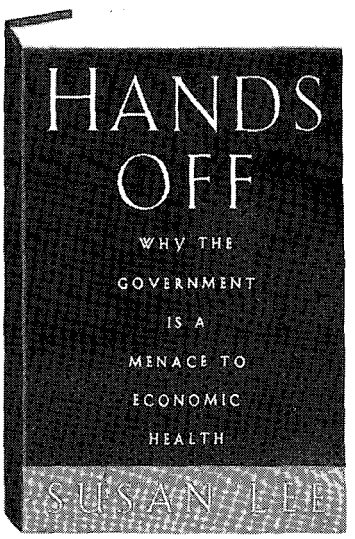
— *The Financial Times*



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Speaking Libel to Power?

Hidden dangers of governments competing in private markets

By Brian Doherty

WHAT STARTED AS MARKET competition between a private business and a government agency has escalated into lawsuits, countersuits, and troubling questions about the fate of free speech when government enters the market.

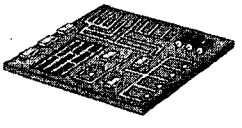
In November 1994, the College Savings Bank accused the Florida Prepaid Postsecondary Education Expense Board of patent infringement. College Savings, based in Princeton, New Jersey, sells a patented financial instrument to help parents pay for their child's college tuition. Florida Prepaid, a state agency, has provided a similar service since 1988. (Before an act of Congress in 1992, the bank couldn't have sued. State governments and agencies had been immune from such suits.) Florida Prepaid denies that its service infringes the College Savings Bank's patent.

In August 1995, the bank filed another suit, claiming that Florida's promotional literature contained false claims that qualified as unfair competition. That's when things started to get interesting. Bank President Peter A. Roberts commented to the *Miami Daily Business Review* that Florida's promotional pamphlets contained "half-truths" and "outright lies." Florida Prepaid countersued for product disparagement, trade libel, and defamation.

The countersuit is what makes the case more than a nasty business dispute. "As a constitutional and historical matter, you can't be sued by the government for criticizing it," says Sandra Baron, the executive director of the Libel Defense Resource Center, a nonprofit clearinghouse for information on libel issues. "The notion of providing civil penalties for being critical of government is something this country has never adopted."

Since Florida Prepaid is a government agency, she says, the case could have "significant repercussions" if the agency wins. Unless the court explicitly says that it is considering Florida Prepaid as a business competitor, not a branch of government, allowing it to proceed with a libel suit could open the door for other government agencies to sue their critics. ®

No Thanks for Sharing



Has Sematech helped the semiconductor industry?

By Nick Gillespie

HAS THE PUBLIC-PRIVATE VENTURE Sematech accomplished its goal of reinvigorating the U.S. semiconductor industry? In 1992, the government's own General Accounting Office said yes: "Sematech has demonstrated that a government-industry R&D consortium on manufacturing technology can help improve a U.S. industry's technological position."

That's the wrong conclusion, contend Douglas A. Irwin and Peter J. Klenow, professors at the University of Chicago's Graduate School of Business. Their recent National Bureau of Economic Research working paper, "High Tech R&D Subsidies: Estimating the Effects of Sematech," concludes that far from generating the kind of productive research and development intended, Sematech subsidizes research that would be undertaken anyway. And, the authors suggest, the "slight rebound" in market share by U.S. semiconductor makers is more attributable to a falling dollar, trade agreements with Japan, and the declining importance of memory chips in the semiconductor market.

The government created Sematech in 1987. Member firms are required to contribute personnel and financial resources: 1 percent of their semiconductor sales revenue, with $1 million as the donation floor and $15 million as the donation ceiling. The consortium receives about $100 million a year in matching government funds until 1997. Members have a "right of first acceptance" on Sematech-funded equipment, which means they can acquire new equipment six to nine months before nonmembers. Of the 14 original member firms, 11 remain.

To evaluate Sematech's effectiveness, Irwin and Klenow develop two hypotheses. The "commitment" hypothesis holds that competing firms will shy away from "high-spillover" research—research that will tend to benefit the industry in general along with the particular firm doing the research. The commitment hypothesis provides a rationale for government subsidies, since without them basic R&D may never get done. If that hypothesis is true, then, Sematech should have boosted participating firms' research spending.

The "sharing" hypothesis, by contrast, suggests that participating in Sematech would allow firms to reduce duplicative R&D efforts. If true, it does not provide a rationale for government subsidies, since "[f]irms should have every private incentive to form joint ventures to raise their R&D efficiency," write Irwin and Klenow.

In a comparison of R&D spending by member and non-member semiconductor firms, Irwin and Klenow found no evidence that Sematech increased research productivity or spurred more R&D spending. In fact, member firms cut their overall R&D by about $300 million a year, consistent with the sharing hypothesis. "Sematech," says Klenow, "is not worth the government money put into it." ®

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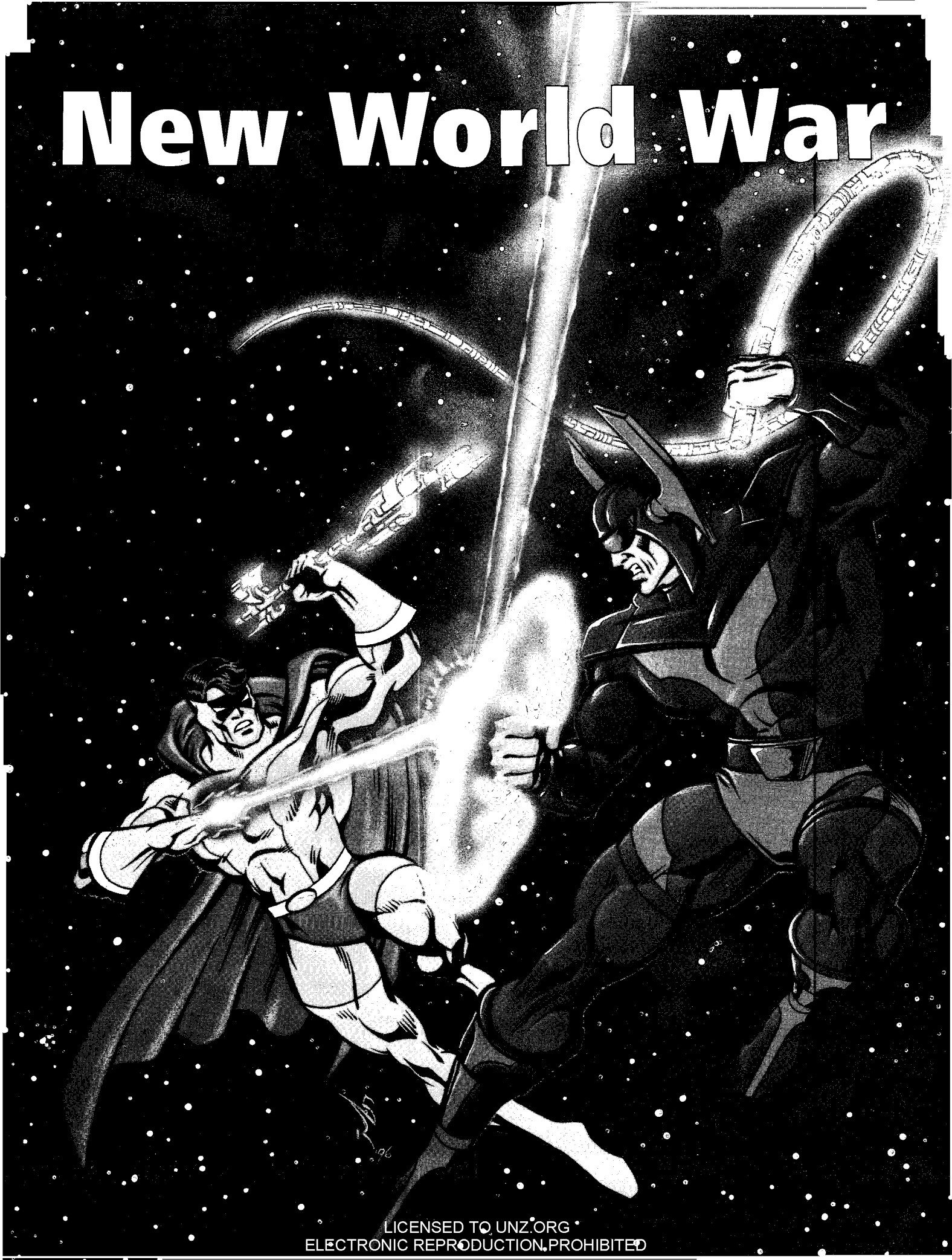


LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Cancelbunny and Lazarus battle it out on the frontier of cyberspace—and suggest the limits of social contracts.

By David G. Post

> "Hereby it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man....It may peradventure be thought there was never such a time nor condition of warre as this; and I believe it was never generally so, over all the world; but there are many places where they live so now. For the savage people in many places of America...have no government at all, and live at this day in the brutish manner, as I said before. Howsoever, it may be perceived what manner of life there would be, where there were no common Power to feare...."
>
> Thomas Hobbes, Leviathan, chapter 13 (1651)

It all sounds like the plot of a (mediocre) science fiction novel: strange beings with names like the Cancelbunny, an144108, XS4ALL, and Scamizdat, fighting on a battleground with no fixed location anywhere on earth, using strings of binary digits as their weapons. But science fiction it is not; it is the ongoing battle in cyberspace between the Church of Scientology (CoS) and its critics, the first War—or Warre—in the Age of the Internet. If you want evidence that the Internet may indeed be a place like no other, please read on. And even if you have no interest in anything having to do with "cyberspace," you might wish to hear more of these bizarre doings if you care about the way that politics and law shape (or fail to shape) the way we live. For just as contact with radical new forms of civil society—places with "no government at all"—focused the minds of Hobbes and the other Enlightenment philosophers on the nature of government and political power, so too may contact with this curious new electronic world and its odd new rules of conduct lead us to think anew about what life "without a common Power to keep us in awe" might be like.

Depending on whom you ask, Scientology is either a legitimate religion offering followers a route to spiritual enlightenment and salvation, or a fraudulent scam—and, let me say at the outset, I have no opinion as to which characterization is the correct one. What is clear, however, is that relations between adherents and critics have never been pleasant; passions run feverishly high on both sides, and the Scientologists have often been accused of dealing, shall we say, rather harshly with their critics.

SCOTT ROSEMA

But at least until July 17, 1991, there was no truly organized opposition to the Scientologists' teachings and tactics, no true community of the disaffected. How could there be? Building an anti-church, after all, takes just about as much administrative and operational savvy, not to mention money, as building a church. But that feature of the landscape changed dramatically on the date mentioned, when a Scientology critic, Scott Goehring, formed a discussion group—alt.religion.scientology—on what is called the Usenet network portion of the Internet. (As a harbinger of complications to come, Goehring forged the return address of the message used to create alt.religion.scientology, using the address "miscaviage@flag.sea.org" in an apparent reference to Scientology head David *Miscavige*.) Suddenly, in the 30 seconds or so that it took Goehring to type out his request, and the $0.05 or so it cost him to transmit that message to the computers responsible for Usenet network configuration, there was a place where the disgruntled can meet to exchange ideas and information—a new community, one of the literally hundreds of thousands of such communities that have sprung into being on the Internet over the past few years.

Alt.religion.scientology indeed became a hotbed of critical commentary on Scientology's teachings and tactics (as well as one of the Internet's most actively used discussion forums, with more than 2,700 postings per week). But things began to get really interesting when some participants in the discussions began appending to their messages long excerpts from—and, on occasion, the full text of—some of Scientology's secret scriptures, known as "the Advanced Technology." CoS followers hold fiercely to the notion that their revered, secret texts must never be disseminated except to the rigorously initiated—that it is, in fact, dangerous to allow people who

have not reached a certain stage in their training to view these materials. CoS critics, on the other hand, claim that these documents are a critical part of the public debate about Scientology, and that exposing these documents to public view, with their seemingly bizarre descriptions of alien beings and prehistoric thermonuclear war, will help keep potential adherents out of the Scientologists' clutches.

Upon discovering that the Advanced Technology was being freely disseminated across the globe, the CoS's legal staff sprang into action. These texts, they asserted, contain copyrighted materials as well as "trade secrets." Distribution—electronic or otherwise—thus constitutes bald-faced copyright infringement and unlawful misappropriation of confidential information. A number of lawsuits were filed—in Alexandria, Virginia, San Jose, Denver, and Amsterdam—against the individuals allegedly responsible for these postings, against the entities that provide those individuals with connections to the Internet, and even, in one case, against a newspaper (*The Washington Post*) that published excerpts from one of the sacred texts in its story about the cases. These cases are still pending, likely to drag on toward ultimate resolution for years.

Just as contact with radical new forms of civil society focused the minds of Hobbes and the other Enlightenment philosophers on the nature of government and political power, so too may contact with this curious new electronic world and its odd new rules lead us to think anew about what life "without a common Power to keep us in awe" might be like.

These cases, to be sure, raise some difficult and important legal issues. For example, trade secrets are generally defined under U.S. law as any information that gives one a commercial advantage over competitors and as to which reasonable precautions against disclosure have been taken—customer lists, industrial processes, and the like. Can a church even hold trade secrets? Are we prepared to recognize a religion market in which competitors are battling for commercial advantage?

Or, to take another example, assume that the CoS holds the copyright to these texts. U.S. copyright law allows the "fair use" of a copyrighted work, including copying and distribution "for purposes such as criticism, comment, news reporting, [and] teaching." You may, for example, quote portions of a book in a review without fearing a copyright infringement lawsuit. Can posting these texts to the Internet, in the context of an attempt to generate greater public discussion and awareness of the Scientologists' teachings, be excused on these grounds? The fair use inquiry is a notoriously slippery one, decided by courts on the basis of an ad hoc balancing of various factors, including whether or not the work is being distributed for commercial gain (a factor favoring the Net distributors, who are making copies available at no charge) as well as "the amount and substantiality of the portion used in relation to the copyrighted work as a whole" (a factor strongly favoring the Scientologists).

And finally, should the Internet service providers, who function as the "pipeline" connecting the individual posters to the Internet, be liable for any harm caused by these distributions? On the one hand, they can hardly be asked to monitor all of the thousands or hundreds of thousands of messages that flow through their systems each day to determine whether there is copyright infringement going on in any of them. On the other hand, liability under U.S. copyright law has in the past been broadly applied to intermediaries—bookstores, for example, are liable for infringing material contained in the books they sell, nightclub owners for infringing performances by musicians they have hired, etc.—on the ground that those who profit, however indirectly, from the infringing activities of others should be made to compensate the injured copyright holder. Why should those well-established principles not be applied here?

These are questions that courts are likely to be struggling with for some time. The CoS has been largely successful in obtaining favorable preliminary rulings—that the documents do contain trade secrets, that fair use does not permit their posting to the Net, and that the service providers may indeed be liable for these postings—that strike many observers (including this one) as attempts to unthinkingly jam the square peg of existing law into the round hole of the Internet. But this entire episode has significance far beyond the boundaries of these important legal questions. In many ways it is a primer on the way that disputes will be handled in a networked world, on the nature of the anarchy that, in the eyes of many, rules (and may continue to rule) on the Internet, and on just how difficult it will be to exercise any degree of control over this environment using traditional legal tools. Whatever a "law of the Internet" ultimately looks like, it will somehow have to incorporate (at least) four principles that emerge from these battles.

1. There's no there there. Assume that all of the Scientologists' claims are true, that these documents really are protected under copyright and trade secret law and have been unlawfully posted to alt.religion.scientology. Assume further that some court, in this country or elsewhere, was persuaded that alt.religion.scientology is nothing more than a haven for unlawful activity and that it should be closed down. What then?

Alt.religion.scientology is not like, say, a bookstore or some similar physical "place" that can be located, boarded up, and its operators hauled into court; like the Internet itself, it has no owner, no operator, no central computer on

which it "lives." Usenet groups like alt.religion.scientology come into existence when someone (like Scott Goehring) sends a proposal to establish the group to the specific newsgroup (named "alt.config") set up for receiving such proposals. The operators of each of the thousands of computer networks hooked up to the Internet are then free to carry, or to ignore, the proposed group. If a network chooses to carry the newsgroup, its computers will be instructed to make the alt.religion.scientology "feed," i.e., the stream of messages posted to alt.religion.scientology arriving from other participating networks, accessible to its users, who can read—and, if they wish, add to—this stream before it is passed along to the next network in the worldwide chain. It's a completely decentralized organism—in technical terms, a "distributed database"—whose content is constantly changing as it moves silently around the globe from network to network and machine to machine, never settling down in any one legal jurisdiction, or on any one computer.

Not only is alt.religion.scientology immune from being boarded up, but what the technology giveth, sometimes not even the technology can taketh away. The Scientologists learned this early on, when Helena Kobrin, an attorney for the CoS, issued a "Remove Group" message to alt.config, asserting that alt.religion.scientology should be deleted from the network because a) it had been started by a forged message, b) it misleadingly used the trademarked name "Scientology" in its title, thus implying some official connection to the CoS, and c) it "has been and continues to be heavily abused with copyright and trade secret violations and serves no purpose other than condoning these illegal practices."

But trying to stop a Usenet group this way is punching a paper bag; there's no forum in which to make these arguments other than Usenet itself, no central decision maker that can evaluate the validity of those claims and decide whether or not alt.religion.scientology should survive. That decision is entirely in the hands of the owners of each of those thousands of computers, most of whom, in this case, simply chose to ignore the request to delete the alt.religion.scientology group.

2. Anonymity changes everything. Many of the documents in question were posted to alt.religion.scientology attached to signed messages from identifiable individuals. Many, on the other hand, arrived in the Usenet feed bearing addresses like "an144108@anon.penet.fi," identifying them as having been transmitted through a well-known Finnish "anonymous remailer." Anonymous remailers like anon.penet.fi operate very simply: If Alice wants to send an anonymous message to Bob (or to alt.religion.scientology), she prepares the message and sends it not to the intended recipient but to the anon.penet.fi address (along with forwarding instructions); the remailer simply strips off all of the information from this message related to Alice (and the machines that Alice used to transmit the message), and it then forwards the message—now containing a "return address" indicating only the remailer from which it came—as instructed.

What kind of rules—copyright, trade secret, or any other—can be enforced in a world where individuals can so easily hide their identities? The significance of this question was not lost on CoS officials. In a move that sent shock waves across the Net, many of whose denizens believed that anonymous remailer technology was somehow foolproof, CoS representatives in early 1995 marched in to the offices of the Finnish police and managed to obtain a warrant authorizing the police to search the anon.penet.fi mail logs for the identification information pertaining to an144108.

But while the Finnish police were indeed able to obtain the information they sought from the remailer operator, the Scientologists' tactics here may, inadvertently, simply have speeded up the development of more sophisticated techniques to ensure the security of anonymous messages. By these actions, all Internet users have been made aware that they might want to avoid remailers like anon.penet.fi that retain copies of incoming identification information if they want more protection from the forces of the "real world" in Finland or elsewhere. More important, many of the documents arriving on alt.religion.scientology's doorstep these days—including those coming from the as-yet-unidentified "Scamizdat," an individual (or is it a group of individuals? an arm of some multinational organization?) responsible for a number of postings containing large chunks of the Scientology secret materials—have begun to arrive through a chain of multiple anonymous remailers. This makes it far more difficult to secure the necessary cooperation from local authorities that would be required to trace the messages back to their source(s). And by combining the use of multiple anonymous remailers with use of widely available cryptographic techniques for "scrambling" messages, obtaining identification information becomes even more difficult—approaching, many suggest, complete impossibility.

Assume that the Scientologists' documents are protected under copyright and trade secret law and have been unlawfully posted. Assume that some court was persuaded that alt.religion.scientology is a haven for unlawful activity and should be closed down. What then? Alt.religion.scientology is not a physical "place" that can be boarded up, and its operators hauled into court.

So now those possessing secret Scientology texts they wish to disseminate can, if they wish, avoid the unpleasant prospect of being hauled into court to be made answerable for their actions, while still accomplishing their goal. As Scamizdat him/her/itself was quoted as saying: "While the Net has its own perpetual struggles among its orthodoxy and revisionists, it strobes into immobility lawyers and money that darken the battles in the ordinary world."

Whether or not lawyers are "strobed into immobility" (?), the day of the traditional lawsuit as a means to settle disputes of this kind may indeed be numbered.

3. Information can't be controlled. To be sure, even in the non-virtual world—what MIT Media Lab's Nicholas Negroponte has dubbed "the world of atoms"—information is a pretty slippery quantity. But at least there is a measure of possible control over its dissemination and distribution in a world where newsletters can be seized, printing presses impounded, and bookstores boarded up. Perhaps the most obvious implication of the Scientology War is that on the new global network that measure of control has all but vanished.

After the Scientologists were successfully able to impound documents posted through a Dutch Internet Service Provider, those documents appeared on several dozen sites on the World Wide Web, available to all for easy downloading. And if those machines could somehow be made to disappear, new ones would surely take their place.

For example, the Scientologists have been able, on a number of occasions, to obtain court orders allowing them to seize and impound computers on which their allegedly proprietary material was stored. But whatever hardship such actions may impose on the individuals whose machines are taken, the information itself is blissfully undisturbed by assertions of control over physical hard drives and the like, as it continues to speed around the globe unimpeded. Indeed, shortly after the Scientologists were successfully able to impound a number of documents posted through a Dutch Internet Service Provider (known as XS4ALL), those documents—now dubbed the "Anti-Scientology Fact Kit"—appeared on several dozen sites on the World Wide Web, available to all for easy downloading. And if those machines could somehow be made to disappear, new ones would surely take their place. Once information crosses the border into cyberspace, it is uncontrolled and, at least with current technology, uncontrollable; if nothing else, our notion of what constitutes a "secret," trade or otherwise, in this kind of universe is likely to require substantial modification.

4. New weapons will arise. If the weapons that have worked in the past in the ongoing battle to control information flow prove ultimately toothless, the Scientology War has already given us a glimpse of what some of the new weapons might look like. Most primitive is the technique known on the Net as "spamming"—bombarding an area of the Net with an inordinately high number of messages. In the early days of the Scientology War, CoS staffer Elaine Siegel suggested in a memo flooding the Net with positive messages about Scientology as a counter to posted criticism. "Imagine 40 to 50 Scientologists posting on the Internet every few days; we'll just run the SPs" ["suppressive persons," in Scientology lingo] right off the system. It will be quite simple...to make the Internet a safe space for Scientology to expand into." The CoS has denied that this was ever official CoS policy, but in any event the church's critics quickly deployed countermeasures: software programs known as "kill files" that instruct their computers not to display any messages from particular e-mail addresses that may appear in the Usenet feeds, thus making it far more difficult for anyone to enlist an army of spammers trying to disrupt ongoing conversations.

Subsequently a more sophisticated series of weapons made its way onto this battleground. The software that allows the Usenet discussions to proceed has a built-in cancellation function, which allows any person posting a message to a Usenet discussion group to send out a subsequent cancel command that propagates around the Usenet network from machine to machine and instructs each participating machine to ignore the user's previously posted message. Designed to allow users to cancel their own postings, this command can be manipulated, by widely available procedures, to allow you to cancel someone else's message, i.e., to forge a cancel command to make it look as though it came from the original poster.

And thus it was that in late 1994, postings began to vanish from alt.religion.scientology, occasionally with an explanation that the postings had been "canceled because of copyright infringement." To this day, it is not known who was behind the deployment of these "cancelbots," as they are known. Again, the CoS disclaimed responsibility, and the anti-Scientology crowd began to refer to this anonymous participant simply as the "Cancelbunny," a tongue-in-cheek reference to both the Energizer bunny and to a well-known Net inhabitant, the Cancelmoose, who has taken it upon himself (itself? themselves?) to set up a cancelbot-issuing process to deal with other kinds of spamming incidents. But whoever or whatever the Cancelbunny may be, its efforts were quickly met by the development of yet another software weapon, appropriately dubbed "Lazarus," that resurrects canceled messages (or, more accurately, simply alerts the original poster, and all other participants in the newsgroup, that a specific message has been canceled, leaving it up to the original poster to reinstate the message if he or she was not the party that issued the cancel command).

What is happening here? Surely the center of gravity of our law-making and law-enforcement apparatus is shifting away from the familiar rules and instruments that have served us, whether for good or ill, in the world of atoms. That's the polite version. Less politely, cyberspace looks a lot like Hobbes's quasi-mythical construct, the state of nature, where the inhabitants have "no common Power to feare" and where there is "no government at all." Of course, law and an ordered society will emerge from out of the state of nature—

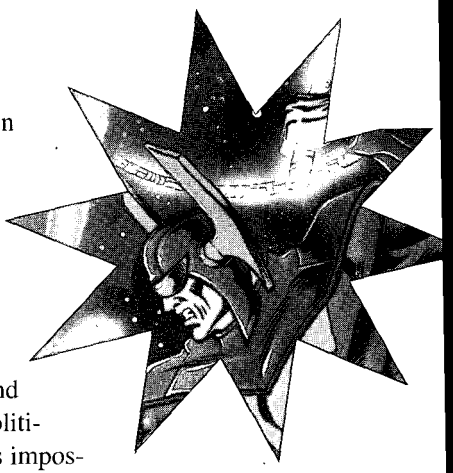
or at least so Hobbes (and Locke, and most of the other Enlightenment philosophers) believed—by means of a "social contract" voluntarily entered into by the inhabitants. Indeed, only law that emerges from something resembling this process—only law as to which the "consent of the governed" has been obtained, in Jefferson's phrase—is a truly legitimate exercise of state power.

There has always been a strong fictional element to using this notion of a social contract as a rationale for a sovereign's legitimacy. When exactly did you or I consent to be bound by the U.S. Constitution? At best, that consent can only be inferred indirectly, from our continued presence within the U.S. borders—the love-it-or-leave-it, vote-with-your-feet theory of political legitimacy. But by that token, is Saddam Hussein's rule legitimate, as least as to those Iraqis who have "consented" in this fashion? Have the Zairois consented to Mobutu's rule? In the world of atoms, we simply cannot ignore the fact that real movement of real people is not always so easy, and that most people can hardly be charged with having chosen the jurisdiction in which they live or the laws that they are made to obey.

But in cyberspace, there is an infinite amount of space, and movement between online communities is entirely frictionless. Here, there really is the opportunity to obtain consent to a social contract. Virtual communities can be established with their own particular rule sets; power to maintain a degree of order and to banish wrongdoers can be lodged, or not, in particular individuals or groups; and those who find the rules oppressive or unfair may simply leave and join another community (or start their own).

That potential—not the availability of video on demand, or interactive games, or any of the other technological wonders—is what makes the emergence of cyberspace a truly extraordinary political event. The consent of the governed can move from a theoretical construct to a real principle of governance. No longer will we need to theorize about the content of the laws that people would choose if they were free to do so; the Net will reveal those preferences for us by means of the invisible hand of a worldwide open market for laws, with communities competing for our adherence. So if the inhabitants of alt.religion.scientology want to have a community where copyright is ignored, why should we interfere, since anyone who finds that notion unattractive can simply remain outside its borders and move to other communities—the Microsoft Network, say—where other, more protective rules are in place?

The answer, of course, is well illustrated by the Scientology War itself. After all, the Scientologists were not willing participants in this community. They did not choose to post their documents to alt.religion.scientology subject to this community's rules. In other words, each community's rules will have some spillover effects on the inhabitants of other communities, both within and without the boundary between cyberspace and the world of atoms. Sovereigns wielding power in the real world do not and cannot permit individuals from within other jurisdictions to lob explosives over their borders, and it is too facile to believe that they will permit these virtual communities to do so either.



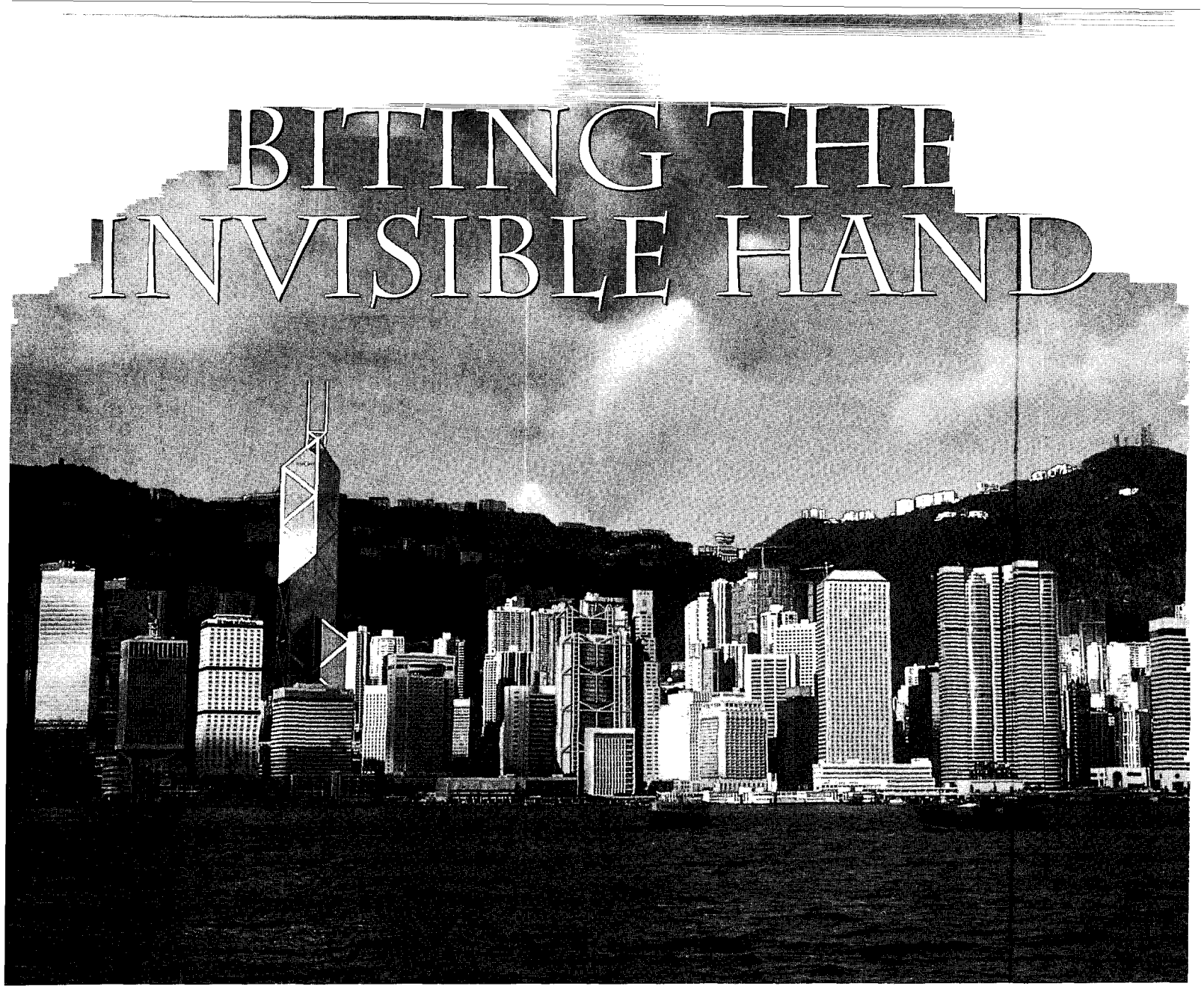
Cyberspace may indeed be difficult for territorially based authorities to control, but we court danger, and put this remarkable experiment in political life at risk, if we assume that it is impossible to control from within the non-virtual world. We have managed to stave off the Orwellian nightmare up to this point, but it is by no means foreordained that we can continue to do so. Cyberspace must, in short, take its place among the community of nations. This will require the development of a degree of mutual recognition and respect on both sides of the border between the world of atoms and the world of bits.

The software that allows Usenet discussions to proceed has a built-in cancellation function, which allows any person posting a message to send out a subsequent cancel command. Thus it was that in late 1994, postings began to vanish from alt.religion.scientology, with an explanation that the postings had been "canceled because of copyright infringement."

Existing sovereigns must defer to the inhabitants of this new place regarding those matters in which the legitimate and unique interests of those inhabitants are paramount; it is the inhabitants of cyberspace, after all, who are in the best position to determine the varying shapes of a copyright law that can truly take account of the strange features of this new informational landscape. Any attempt to require slavish adherence to a copyright law designed for physical objects in an atom-bound world should be fiercely resisted. But the inhabitants of cyberspace, too, must develop mechanisms to recognize and respect the legitimate interests of individuals outside their borders. The challenge is clear and almost overwhelmingly complex, but we cannot fail to meet it lest we lose this opportunity, which may be unique in human history, to design a world in which people are finally free to live their lives as they see fit. R

David G. Post (david.post@counsel.com) teaches constitutional, copyright, and cyberspace law at the Georgetown University Law Center, and is the co-director of the Cyberspace Law Institute. Anyone seeking additional information about the disputes discussed in this article can find a wealth of material on the Net itself. You might begin at either the CNN web site, http://www.cnn.com/US/scientology/index.html, Ron Newman's web site, http://www.cybercom.net/~rnewman/scientology/home.html, or the web site maintained by the Church of Scientology's Director of Media Relations, http://www.theta.com/goodman.

BITING THE INVISIBLE HAND



THE GREAT SOCIETY COMES TO HONG KONG.

BY WILLIAM MCGURN

Not since Lord Macartney refused to get down on all fours and perform the ritual "Three Kneelings and Nine Prostrations" at the feet of an 18th-century emperor has one of Her British Majesty's representatives upset the court of China as much as Chris Patten, the current governor of Hong Kong. A 20th-century politician sent to fill a 19th-century seat, Patten made it clear from the day of his arrival in 1992 that it would no longer be business as usual. The Chinese took the announcement of his political reform package as a declaration of war. The result has been an impressive stream of personal invective directed at Patten and emanating from Beijing: "a dictator," "a strutting prostitute," the "greatest villain in all history."

Insofar as people pay any attention to these epithets, they have probably served only to persuade the Hong Kong public that their governor must be doing something right. But now the Chinese have come up with a label that is not as easily thrown off: a welfare statist. In Hong Kong these are still fighting words, and when China's representative to the budget talks of the Sino-British joint Liaison Group, Chen Zou'er, accused Patten just before Christmas of allowing Hong Kong's welfare spending to run amok, the charge made headlines. Over Patten's term as governor, Chen pointed out, welfare spending had jumped 66.5 percent in real terms. Likening the increases to a Formula One racing car that had sped out of control, Chen warned that "if it goes on at the same speed, in some years' time the car must crash and the passengers must be killed."

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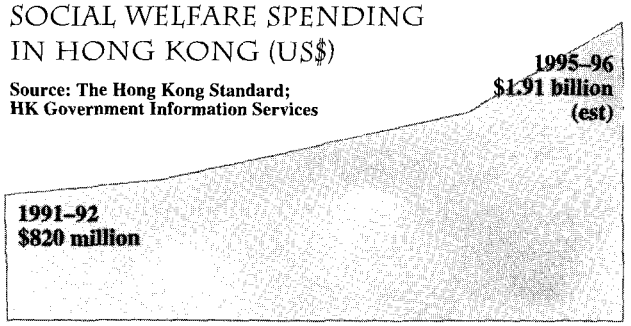
SOCIAL WELFARE SPENDING IN HONG KONG (US$)

Source: The Hong Kong Standard; HK Government Information Services



% OF HONG KONG GOVERNMENT EXPENDITURES

	1963–64	1974–75	1984–85	1994–95*
Health	8.7%	8.7%	8.1%	11.0%
Education	9.2	18.9	16.5	17.1
Housing	3.0	4.1	5.1	12.1
Social Welfare	0.4	2.7	5.6	6.4

* estimates
Source: Hong Kong Government Information Services Yearbook

Leave aside, if you will, the irony of a Chinese government still officially committed to socialism attacking as welfarist the policies of what the Heritage Foundation and Fraser Institute in separate studies have each labeled the freest economy in the world, the same place of which Milton Friedman said, "If you want to see capitalism at work go to Hong Kong." Leave aside, too, the grudge China nurses against Patten for his success in having pushed through his political reform package against Beijing's express wishes. Leave aside, finally, the crowning irony that this latest of Chinese attacks came at the very moment Patten had just returned from a trip back to Britain where he took a leading role in defense of Tory efforts to trim back state spending. Because all this notwithstanding, Chen has a point.

The truth is that Hong Kong *has* seen an explosion in its welfare spending—an explosion important less for its amount (still tiny in both absolute and relative terms) than for the decisive philosophical shift it represents in a place like Hong Kong. Add to this a British director of social welfare who vows to leave behind a "First World welfare system" to go with Hong Kong's First World economy and the introduction into business-oriented Hong Kong of something it never had before—politics—and you begin to understand the fear among many that Hong Kong may be losing hold of the very qualities that made it so special. And so as the colony lurches toward 1997 it faces two threats: the threat to its civic life posed by its soon-to-be-overlords on the mainland, and the threat to its economic freedoms posed by a new class of politicians running fast and hard toward the very government programs the rest of the world is trying to leave behind. As Hong Kong entrepreneur Gordon Wu puts it, "You now have the Great Society being imported to Hong Kong."

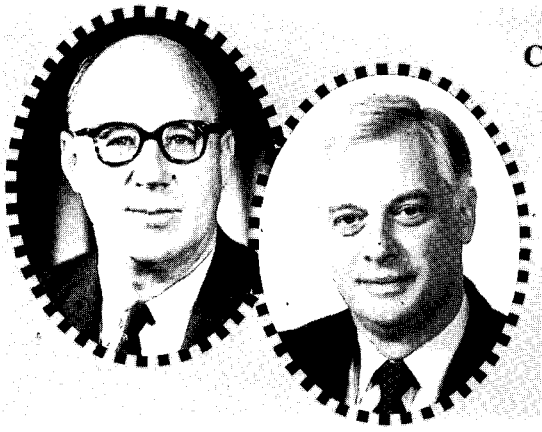
That, of course, is just what some of Hong Kong's new legislators think it needs, and here they have the enthusiastic support of the English-language press. It is easy to understand this enthusiasm, however misguided, for Hong Kong's very success makes for strong contrasts: old men living in cages (a *de rigueur* feature of all TV documentaries), veterans who can't afford medical treatment, widows left with even less than a mite, and so on. The idea is that Hong Kong may have had to scrape by in the past, but with budget surpluses surely there is room to spread a little around to the less fortunate. "They think you can just take 10 percent here and put it there," says Jimmy Lai, the garment-maker turned media baron—he publishes Hong Kong's most popular weekly, *Next*, and daily, *Apple*. "What they don't understand is that Hong Kong is so small. If you squeeze it even just a little, you can end up losing the whole thing."

To understand the dynamics at work here, it is important to understand both how Hong Kong came to be what it is and what 1997 is doing to it. At the end of World War II, Hong Kong was still a dusty entrepot, clear second fiddle to Shanghai, its sophisticated cousin to the north. All that changed irrevocably when the Red Star was raised over China in 1949. The result was to strangle Shanghai as a competitor and send its people, along with hundreds of thousands of their cousins from other parts of the mainland, over the border into Hong Kong. They came by plane, train, and boat—some even swam through shark-infested waters—but mostly they arrived on foot. And they lived anywhere they could: in the streets, under trees, on the hills, in homes that were little more than a few sorry square feet of old boards and tin. In its 1957 annual review the Hong Kong government admitted its desperation in a bleak lead chapter titled "A Problem of People."

It turned out, however, that Shanghai's fall was Hong Kong's gain. For while these refugees brought no money, they did bring something more precious: skills, knowledge, and a willingness to work. In almost no time at all, they proved to be the impetus for Hong Kong's first wave of industrialization. Not only did Hong Kong survive, it blossomed, and it did so despite the severe blow dealt by the loss overnight of its largest market, China, to a U.N. trade embargo imposed during the Korean War. "All of a sudden, you had the best people shoved into this tiny place," says Daniel Ng, executive chairman of McDonald's Restaurants (Hong Kong). "I suppose we are fortunate the government didn't have time to react. It was simply overwhelmed."

There is much to that. Much of Hong Kong's takeoff occurred simply because the colonial government had neither the will nor the resources to attempt too much. In fairness to the authorities, however, Hong Kong did benefit from a bureaucracy with enough horse sense to realize that the best thing to do with the Cantonese was get out of their way. If that legacy has carried over today it is largely the result of one towering figure: John James Cowperthwaite, financial secretary from 1961 to 1971 and de facto author of Hong Kong's budgets for a good part of the 1950s. Under Cowperthwaite's invisible hand, industrial wages doubled, exports grew at an average 13 percent each year, and the percentage of households in acute poverty shrank from more than 50 percent to 16 percent.

Not that Hong Kong didn't have its share of leaders constantly pushing pet schemes and preferential programs to develop the colony's manufacturing or trade. But Cowperthwaite's de facto



COWPERTHWAITE *(left)* and **PATTEN** *(right)*: ***Even in the Cowperthwaite era there were some exceptions to the rule of laissez-faire. After a disastrous Christmas Day fire in the Shek Kip Mei squatter area that left 53,000 homeless in a single night, the Hong Kong government assumed a new role: landlord. So diligently has the government pursued this aim that it is today the largest landlord in the colony, housing just over half of Hong Kong's 6.2 million people in government flats.***

control of the purse strings, his insistence that a place as small as Hong Kong could not afford to bet wrong, and—just as critical—his ability to defend this position intellectually in debate resulted in what was, for at least a short period, the freest economic experiment in world history. So scrupulous was Cowperthwaite about keeping government's role to a minimum that there is still no official recording of Hong Kong's national wealth for many of the years he was in charge. When I asked him about this years later he said it was deliberate. "If I allowed people to keep statistics," he told me, "they would only misuse them."

Yet even in the Cowperthwaite era there were some exceptions to the rule. After a disastrous Christmas Day fire in the Shek Kip Mei squatter area that left 53,000 homeless in a single night, the Hong Kong government assumed a new role: landlord. So diligently has the government pursued this aim that it is today the largest landlord in the colony, housing just over half of Hong Kong's 6.2 million people in government flats. Often hailed as Hong Kong's proudest achievement, the government's intrusion into the housing market provides a particularly apt metaphor for how difficult it is to remove dollars from the public ledger once they move out of private control. Public housing has come to be considered a birthright, and it is not uncommon to see BMWs and Mercedes outside public flats. And though the government talks about selling flats off to the public, the extent of the subsidies makes even ownership less attractive than the status quo: In some cases what people pay now would not even cover the monthly management fee. This has led to a strange contradiction which has seen the government's involvement in the housing market grow with affluence rather than decline: witness its vow to build 292,500 new flats in the years up to 2001.

Likewise with education and health, the other two big-ticket items of the Hong Kong budget. Today health accounts for 11 percent of the budget, most of it going to government hospitals. Again the Hong Kong yearbook tells the story. "Health promotive and preventive care services are generally free," it explains. "Under a policy that nobody should be denied adequate medical treatment through lack of means, other medical charges (especially for hospital treatment) are heavily subsidized." They aren't kidding. Patients in general wards are charged only $7.00 a day, and at some clinics charges are as low as 13 cents. Again the result is an increasing government control over the delivery system: Of the colony's 27,506 hospital beds, only 3,112 are private, and private hospitals are finding it tougher and tougher to make a go of things against the subsidized competition.

Finally, there is education. Despite Hong Kong's wealth, it has not managed to maintain even one independent institution of higher learning: Of the six universities and one college, all depend on the government for funding. The government also effectively runs the primary and secondary school system, albeit in a less direct way. Again the yearbook is refreshingly frank: "Most schools," it says, "are in the public sector." On the surface things may appear to the contrary, given the abundance of privately named schools (especially those with religious affiliations). Over the years, however, the schools have gradually ceded authority in return for government monies, to the point today where the vast majority of primary and secondary education is paid for by the state. As a consequence the schools have found themselves heavily regulated with regard to curricula, teacher's qualifications and salaries, fees, etc. Altogether the social sectors—education, health, housing, and welfare—now constitute 47 percent of Hong Kong's budget and are growing. And they would have grown even more had Patten succeeded in saddling Hong Kong with the social security program he wanted.

All these tendencies are only being exacerbated by 1997. For the same political reforms that gave Hong Kong people a greater say in the selection of their legislators also gave them a new political class in search of constituencies. Like legislators everywhere, Hong Kong's new politicians find it far easier to call for ways to divide up the pie than to grow it. In days past the executive-led government would have served as something of a balance here, but today it, too, is pushing for expanded welfare programs, at least as part of a broader effort to buy public support for its political reforms.

These moves have left Hong Kong people with a political Hobson's choice. On the one side lies the business community, which vigorously opposes the welfarist inroads on Hong Kong's market but remains distrusted by the public which believes, rightly, that these same businessmen will not stand up to China lest they jeopardize their considerable investments there. On the other side of the fence are the Democrats, who each day come more to resemble their American counterparts.

With the exception of the patrician Martin Lee, a leader of undoubted courage and spirit, the Democratic party is composed mostly of teachers, social workers, and activist types who know little about business; it is no coincidence that their economics spokesman is a medical doctor. Since coming to office the Democrats have welcomed Patten's initiatives on spending and upped the ante, calling for everything from comparable-worth (yes, comparable worth) schemes to social security and populist freezes on stuff like the fare increases on buses and ferries. "It's not much of a choice," says Jimmy Lai, who has more credibility than most businessmen here if only because he's been willing to pay the price: When he criticized Chinese leaders in a column last year, they responded by shutting down the Beijing branch of his Giordano clothing outlet. "If the Democrats run things they will just vote in a free lunch. If the businessmen do they will just cave in to China."

For a brief moment there, it looked like Shih Wing Ching might change this equation. A former Marxist schoolteacher turned property developer, Shih surveyed the political landscape in late 1993 and found pro-business and pro-democracy sides but no one pro-market. In his own business, the problem of government intervention had become painfully obvious. When prices were going up, the government reversed its traditional hands-off approach by introducing regulations that prevented the resale of purchased flats before the development in which they were located was finished and that raised the deposit required for the purchase of a home from 10 percent of the price to 30 percent. Today the property market is in a slump and Shih points to the regulations as one reason why the supply of new flats hit a 10-year low in 1995.

But Shih bowed out of politics even before he really got started. For one thing, neither his wife nor his business partner really supported his entry into politics. But the more important consideration, says Shih, was that the reality of political quid pro quo was hard to square with his libertarian principles. "Libertarians like to promote their ideas," he says wistfully. "They do not usually form parties."

One might think that with their soon-to-be Communist overlords knocking at the door, the Hong Kong public and its political leaders might embrace Shih's idea of minimizing the potential for government abuse after 1997 by minimizing government. Unfortunately neither side seems much interested. The business community sees 1997 as an opportunity for pork and patronage in the form of development. Meanwhile, the Democrats push for the establishment of ever more government agencies and programs that will in less than 14 months' time be administered by the power they distrust most: China.

So mindlessly spendthrift have the Democrats become that several of their pro-market friends, led by Lai—who claims to be the only man in Hong Kong to have read all of Hayek—have instituted a regular set of meetings with party leaders to get them to see that a free market is really in their own interest. In some limited areas the meetings have succeeded (the Democrats did call for a slight tax reduction and have been persuaded of the merits of selling off public housing to the occupants), but it's an uphill struggle. And it doesn't help when leaders like Christine Loh, herself an advocate of huge new spending on behalf of the environment and other concerns, argue publicly that Hong Kong no longer needs economic growth. "In Hong Kong the irony is that it's the bureaucrats who are the good guys," says Yeung Wai-hong, publisher of *Next,* Hong Kong's most popular magazine and its stoutest free market voice. "The most distressing thing today is that there is no one in political life who seems to understand what made Hong Kong Hong Kong."

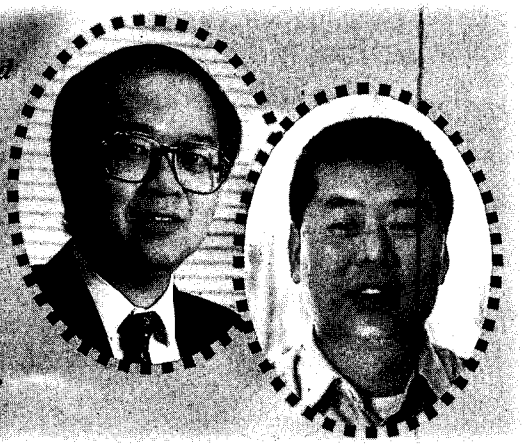
A glimpse of this was provided in 1993, when the Legislative Council debated a proposal to set up a fair trade council. On the surface, a Hong Kong debate over fair trade might be thought akin to the College of Cardinals getting together to review the doctrine of papal infallibility. Yet the truth is that the government doesn't really know what to call itself. It loathes the term *laissez-faire* but hasn't found a satisfactory replacement. Thus did the then–financial secretary, Sir Hamish Macleod, find himself on the defensive when pressed to explain the distinction between "positive non-interventionism"—the government's term for its philosophy—and "doing nothing." His answer goes a long way toward explaining why those who want to preserve the Hong Kong experiment are increasingly gloomy about the prospects. "The correct use is set out...by Mr. Philip Haddon-Cave in a speech to the Hong Kong Federation of Industries on 2 December 1980. I would be very pleased to offer to members who want it the six pages which summarize his interpretation of this phrase."

A six-page summary of a 13-year-old speech? This is the best a Hong Kong financial secretary can do?

Sadly, it appears so. Had the issue been broached in Cowperthwaite's day, the financial secretary would doubtless have seized the opportunity to explain that while "doing nothing" would in practice mean yielding to an unending list of bright new spending initiatives, "positive non-interventionism" required vast expenditures of administrative energies to hold at bay this natural tendency of the government to expand. Although the motion on fair trade was put down largely out of a reluctance among the business community to establish another bureaucracy, there was little evidence of a philosophy and way of life defended. It was left to Martin Barrow of Jardine Matheson (the real-life counterpart to James Clavell's fictional Noble House) to suggest politely that "what keeps the local market fair and competitive is not rules and regulations but the lack of them."

For those of us who admire Patten's attempt to claw back for the people of Hong Kong some of the ground his predecessor had given away, his failure to appreciate the economic dimensions of Hong Kong's freedom comes as a special disappointment. In this Patten's reputation precedes him. Despite his newfound love for the magic of the marketplace, in Britain Patten was a member in full standing of the "wet" camp. Indeed, in a little book called *The Tory Case* published back in 1983, he made his distance from ascendant Thatcherism explicit. "Our aim," he wrote, "must be a welfare society."

In Hong Kong today there are those who believe that this is precisely the aim he has for them in this, the twilight of British



***YEUNG** (left) and **LAI** (right): Hong Kong's free marketers, led by Jimmy Lai—who claims to be the only man in Hong Kong to have read all of Hayek—have instituted a regular set of meetings with Democratic party leaders to get them to see that a free market is really in their own interest. Yeung Wai-hong, publisher of* Next, *Hong Kong's most popular magazine and its stoutest free market voice, says, "The most distressing thing today is that there is no one in political life who seems to understand what made Hong Kong Hong Kong."*

rule. That is probably too harsh. Clearly Patten's time in Hong Kong has increased his appreciation for the virtues of the marketplace. The tragedy is that he appears to see it only as a question of balance, with Britain having gone too far in one direction and Hong Kong not yet far enough. Certainly this is the impression given by the governor's director of social welfare, Ian Strachan, who says publicly that "the most positive aspect about the government's policy is its rapid expansion."

It is true that with the government spending less than 17 percent of GDP, Hong Kong has a long way to go before it is ever confused with Sweden (or even Britain). It is further true, as the government points out, that government spending as a whole has not outstripped economic growth, and that Hong Kong has been faithful to the idea that it must first pay for whatever benefits it initiates.

But what is worrisome is the whole assumption that welfare spending is a good in itself, that the only issue is how to balance this spending against growth. And even within this assumption there are troubling signs. Though it is true that the amount spent on social programs is relatively small and that the overall government share of GDP has remained roughly constant, the potential problem may be bigger than anyone has thought because this share has gone up at a time when the economy was *expanding*; when bad times hit the percentage will become that much greater.

Looking at total government spending, moreover, it is also easy to overlook that this welfare spending is the fastest growing portion of the Hong Kong budget, that health, education, and welfare already account for almost half of all government expenditure, and that the figure would have been far higher still had Patten been successful in getting his original social security program through. Add to this the increasing political pressures coming from the legislative council and the short time Hong Kong has before it is handed over to China, and Hong Kong's days as a sort of free market Shangri La seem numbered. Clearly this is part of what worries China. "The Chinese attacks on Chris Patten on welfare are not so much about Patten himself as his limited horizon," says Richard Wong, head of the colony's only free market think tank, the Centre for Economic Research. "The worry in Beijing is that Patten will not have the resolve to resist the calls for more spending from the Democrats in the remaining few months of British rule."

The new competition coming from an increasingly global economy also makes Hong Kong's drift toward intervention particularly worrisome. This latter point has been particularly overlooked. In days past Hong Kong's low taxes and liberal trade regime constituted a strong comparative advantage vis à vis other nations. But Hong Kong has been steadily shedding manufacturing jobs as industry shifts its plants to the mainland; from 1984 to 1994, the manufacturing sector lost 466,322 jobs and saw its share of the economy move from 41 percent to 17 percent. In short, if Hong Kong has a future it will be as a service center, yet it is precisely here that the drift toward intervention will exact its highest costs. In a recent spat with Australia over air rights, for example, the government claimed that the best thing about the final agreement was that it limited the number of passengers Qantas could take to and from Hong Kong even if it had seats available. In addition to the high cost of housing, licensing regulations have become a key constraint in Hong Kong, and there are now proposals that would make it even more difficult for foreign professionals to find work here. As Shih points out, "The example Britain is setting for China in these final days is not a good one."

Given Hong Kong's relatively sound fundamentals, it is in no immediate danger of losing its economic soul, and talk about a "welfare state" is easily dismissed as alarmist. But in a city of only 6 million people, it will not take much for these worrying trends to get out of control, and the lack of any countervailing political voice raised on behalf of Hong Kong's classic non-intervention will make that task all the more difficult. Indeed, the crowning irony of Hong Kong is that at the very moment its economic system has been vindicated by history, there is not a single politician from either the business or democracy camps who gives any evidence of appreciating what really makes it tick, much less the precious link between the civil freedoms that make Hong Kong such a notable exception in Asia and the economic freedoms that make this life possible. All of which makes the current drift toward more social spending more troubling. "Nobody sets out to have a welfare state," says *Next* publisher Yeung. "What happens is that you wake up with one." ®

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ALL THE PRESIDENT'S FAULT

ILLUSTRATIONS: CHIP BOK

The only way Hillary Clinton can avoid lawsuits over Travelgate is to blame her husband.

By Michael McMenamin and James Oliphant

Hillary Rodham Clinton is not getting much support these days from those close to her, especially on Travelgate, the abrupt, harsh dismissal of seven career government employees from the White House Travel Office in May 1993. The dismissals were followed by FBI and IRS investigations designed to smear the employees' reputations and cover up the real purpose of the purge: getting them out so the Clintons could get their people in. A recently released memo from David Watkins, the former White House director of administration, places Hillary *directly in the middle* of the decision to fire the Travel Office employees and makes her previous statements of non-complicity look like less than the complete truth. Instead of threatening the nose of *New York Times* columnist Bill Safire for calling her on this, a really loyal husband ought to be out there saying, "Look, my wife had nothing to do with it. If any of my staff thought they felt pressure from her, they're wrong. She was simply conveying my wishes, nothing more. It was my call all the way."

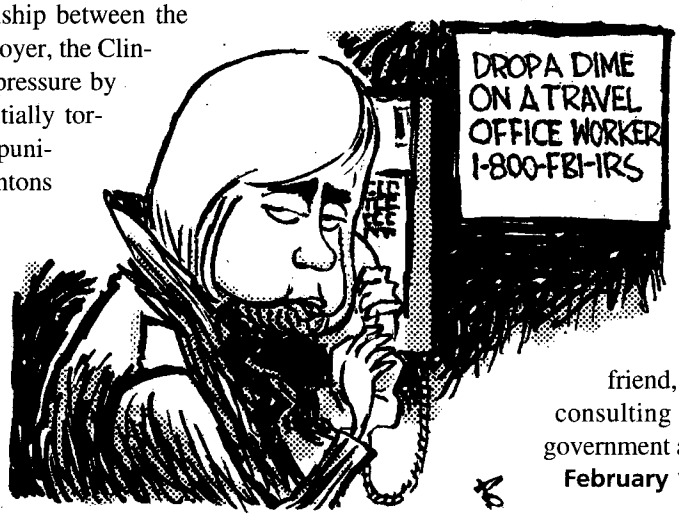
The fact that President Clinton has not said this, indeed had previously gone out of his way to distance himself from Travelgate, is...disturbing. There may be any number of explanations for allowing his wife to twist slowly in the wind, but we prefer to believe that, preoccupied as the Clintons are with their criminal exposure before the Whitewater special prosecutor and the political risks associated with the Senate Whitewater Committee, no one has paid much attention to the first lady's very real exposure to substantial civil liability over her role in Travelgate and its aftermath.

With no one else around to volunteer, REASON asked us to look into the problem on a *pro bono* basis and come up with a legal plan to protect her against any civil suits by the Travelgate Seven. We do this in the same spirit as REASON's efforts in the summer of 1994 to offer President Clinton sound legal advice on how to quickly and expeditiously dispose of Paula Jones's sexual harassment charges so they would not be lingering around to haunt him in his re-election campaign ("Defending the President," August/September 1994). He spurned our advice in favor of the stall-and-delay strategy engineered by his $400-an-hour Washington lawyer, Robert Bennett, the brother of the nationally prominent Republican William Bennett. Today, Paula Jones's embarrassing sexual harassment case is still in the headlines while she inches toward the Supreme Court, fresh from her victory in the Eighth Circuit U.S. Court of Appeals, which laughed Bennett's immunity defense for Clinton out of court.

We trust that Mrs. Clinton—who finished higher in her class at Yale Law School than the president and actually made a living for a while in private practice—will maintain a more healthy skepticism toward legal advice from high-priced Washington lawyers with Republican connections. So let's get to it. What is Hillary's civil exposure in Travelgate, and how can we get her off without a messy jury trial that would further deplete the Clintons' dwindling resources?

The first point—one often lost in the scandal's serpentine turns—is that the seven Travel Office employees could have been fired at any time for almost any nondiscriminatory reason. As at-will employees without contracts, they served solely at the pleasure of the president. This means that if he wanted to blame any or all of the seven for, say, his $200 haircut on the California tarmac in 1993, they could have been fired during the evening news. The first lady's exposure lies not in the fact that the employees were fired but in the role she played to bring this about, the manner in which they were fired, and her subsequent statements about the reasons for the firings.

Mrs. Clinton could face tort liability for her instrumental role in encouraging the firings. No outsider to a contractual or business relationship may intentionally interfere with that relationship unless he (or she) has a privilege to do so. Hillary had no such privilege. As first lady and someone beyond the management structure of the White House, she had no right at law to injure the employment relationship between the seven employees and their employer, the Clinton administration. Any direct pressure by her to fire the seven is a potentially tortious act. And with torts come punitive damages, something the Clintons can ill afford. By dismissing people in a humiliating manner, employers have been found liable for inflicting emotional distress on workers whom they had every right to fire. Thus, any extreme or outrageous conduct on the part of people acting on Hillary's directions in the course of termination or its aftermath which caused severe emotional distress to any of the seven could also make her liable as a tort-feasor.



Finally, Hillary and the White House broke a cardinal rule for employers in termination situations: Don't bad-mouth your employees, even after their terminations. Let your actions—and the employee's personnel file in a formal proceeding—do the talking. In scurrying about for a cover story to justify the firings, the White House told America that the seven had been sacked because of financial mismanagement in the Travel Office. That, of course, turned out to be a lie. Unfortunately, Mrs. Clinton continues, to this day, to push the party line. Now, after all seven have been cleared of any financial misconduct, Hillary may have to defend a defamation action for continuing to drag their reputations through the mud.

Clearly, as her lawyers, we have our work cut out for us. (Of course, we also have the easy part. We don't pay the judgment if she loses.) Trial lawyers will tell you that a useful tool in analyzing the strengths and weaknesses of an opponent's case, especially a fact-intensive one, is to develop a timeline of all relevant facts. Frequently, isolated facts which look good or bad for your client may take on a different light when viewed in juxtaposition with what happened before and after. As we construct the timeline, we will work with the most unflattering version of events and all the negative inferences that come with it. This is the only way to come up with a strategy that avoids a jury trial.

Hillary's first known involvement in Travelgate did not occur until early May 1993. Despite his subsequent attempts to distance himself from the decision, the president was directly involved much earlier. By the time it hit the first lady's radar screen in early May, there was arguably under way a two-pronged conspiracy to smear the reputations of the employees in the White House Travel Office and, in the guise of privatization, replace them with friends of the Clintons.

December 1992. The first prong in the conspiracy appears. Catherine Cornelius, a Clinton cousin who worked on the campaign, sends Administrative Director David Watkins a detailed memo on December 31 urging that the White House Travel Office be privatized. Cornelius will later be uncharitably described by Watkins as a "24-year-old blond with one year's experience."

January 1993. On January 26, Cornelius sends another memo to Watkins on taking over the functions of the White House Travel Office. Later that month, the second prong of the conspiracy appears when Darnell Martens sends a memo to Hollywood producer Harry Thomason, his partner in the aircraft consulting firm TRM and a close Clinton friend, laying out a plan for a large-scale consulting project involving all nonmilitary government aircraft.

February 1993. Martens attempts to insinuate

himself into the White House charter business by approaching Billy Dale, director of the White House Travel Office. Dale turns him down flat. The president's fingerprints first surface on February 10, when he remarks at a Cabinet meeting that he has been advised that lots of money could be saved by reviewing the operation of all government aircraft. The next day, Martens writes a second memo to Thomason, proposing a $500,000 inventory of the nonmilitary government air fleet to be conducted by TRM. Thomason gives it to Clinton, who notes on the memo that "these guys are sharp" and forwards it to Chief of Staff Mack McLarty and David Watkins for action. Meanwhile, on February 15 Cornelius gives Watkins a third document on taking over the Travel Office.

March 1993. Martens complains to Thomason about being rebuffed by Billy Dale and also passes on rumors of corruption in the Travel Office. Thomason, in turn, passes them on to Clinton and Watkins. Acting on the rumors, Watkins assigns Cornelius to the Travel Office with orders to report back by May 15 on what she observes.

April 1993. Cornelius removes files from the White House Travel Office and takes them home. Martens meets with presidential aide Bruce Lindsay and sends a memo urging him to have the president issue an executive order on the audit of nonmilitary planes and give the job to TRM.

So far, so good. They can't lay a glove on Hillary. By contrast, the president's fingerprints are all over Thomason's prong of the conspiracy. Thomason, in turn, can be seen supporting the Cornelius prong of the conspiracy to put more friendly faces in the Travel Office and give him and Martens a shot at brokering the White House charter business. Watkins is just following orders. As the president already told him, Thomason is "sharp," and Watkins knows that Thomason and his wife are old-time Arkansas FOBs. Hillary, by contrast, is nowhere to be seen.

If she were smart, she would have kept it that way and stuck to her health care task force or started writing her book a lot earlier. Unfortunately for Hillary, Thomason was a close friend of hers as well. According to David Watkins, he is the one who got her involved: "Thomason briefed the first lady on his suspicion that the Travel Office was improperly funneling business to a single charter company and told her the functions of that office could easily be replaced and reallocated. Once this made it on to the first lady's agenda, Vince Foster [White House deputy counsel and close friend of Hillary] became involved, and he and Harry Thomason regularly informed me of her attention to the Travel Office situation—as well as her insistence that the situation be resolved immediately by...the firing of the Travel Office staff."

Wednesday, May 12, 1993. Thomason meets with President Clinton for 15 minutes, subsequently with Vince Foster, and thereafter with Mrs. Clinton. Thomason then meets with Watkins, Cornelius, and Foster to discuss the corruption rumors about the Travel Office. Associate White House Counsel William Kennedy joins the meeting, and Foster directs him to contact the FBI about initiating an investigation of the Travel Office. Kennedy does so. This violates government guidelines which prohibit the White House from initiating low-level contacts with the FBI, a post-Watergate reform implemented by the Carter administration to avoid political abuse of the FBI and continued by Reagan and Bush.

The first lady's exposure lies not in the fact that the employees were fired but in the role she played to bring this about, the manner in which they were fired, and her subsequent statements about the reasons for the firings.

Thursday, May 13, 1993. Thomason meets with the president for half an hour. Hillary meets with Foster and Mack McLarty and asks what is being done about the Travel Office. Kennedy calls the FBI again, demands an immediate response about the Travel Office, and threatens to call in the IRS. FBI agents meet at the White House with Kennedy and Foster and tell them insufficient grounds exist for an FBI investigation. The FBI modifies its position after Cornelius tells them about the kickback rumors. Meanwhile, Foster and Watkins devise a plan to conceal the improper contact with the FBI the day before. They determine to conduct a quickie financial audit of the Travel Office using the accounting firm working for Vice President Gore's National Performance Review, which will then serve as an after-the-fact basis for calling in the FBI.

The good news here for Hillary is that the president is still intimately involved in the conspiracy. Presidents are tightly scheduled, yet Bill meets with Thomason for 15 minutes on May 12 and for an extraordinary 30 minutes on May 13. This leaves open the possibility that the president will admit personal knowledge of and responsibility for the terminations, taking Hillary off the hook.

Friday, May 14, 1993. Thomason and Cornelius meet with McLarty in the morning and urge him to fire the Travel Office employees by 5 p.m. that day. Foster objects because they haven't conducted the financial audit which will justify, after the fact, bringing in the FBI and will be offered as the reason for firing the Travel Office employees. McLarty agrees. Hillary doesn't. Watkins also supports the Foster audit cover-up plan, but his notes show a worry it might not work: "What are negative political consequences if NO criminal violations...FBI would not ordinarily get in." Hillary doesn't want to wait for the audit and tells Foster to have Watkins contact her, whereupon she repeats her demand for "immediate action."

Saturday, May 15, and Sunday, May 16, 1993. The audit turns up no evidence of kickbacks, the only basis for the FBI's opening a criminal investigation. The first lady continues to pressure McLarty to fire the Travel Office employees.

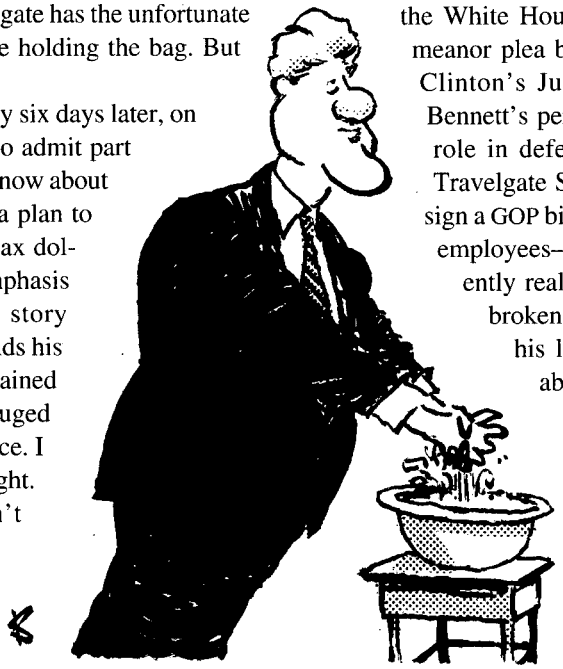
Monday, May 17, 1993. McLarty gives in to the pressure and tells Watkins that Mrs. Clinton wants "immediate action." Watkins gives in, too, and later writes to McLarty, "[W]e both knew that there would be hell to pay if...we failed to take swift and decisive action in conformity with the First Lady's wishes." That same day, however, presidential aide Janet Green tells Travel Office Director Billy Dale that the president himself is

the "one person responsible for what has taken place with your office."

Wednesday, May 19, 1993. Watkins summarily fires five of the seven members of the White House Travel Office and orders them off the premises by noon. Accompanied by security personnel, they pack their belongings into cardboard boxes and are transported off the premises in the back of a White House van with no seats. The other two are out of the country and learn of their dismissals from news reports. Watkins gives Press Secretary Dee Dee Meyers talking points on the Travel Office firings, which falsely describe the dismissals as "the result of a routine review conducted as part of the Vice President's National Performance Review." The talking points also mention the White House contacts with the FBI. Foster is panicked by the reference to the FBI, presumably because the audit uncovered no evidence of kickbacks and the FBI independently may decide to do no more in assisting in the cover-up. He asks Watkins to remove any mention of the FBI, but they are unable to find Meyers in time. Foster's concern that the FBI not be mentioned also probably accounts for Watkins's failure to tell the five employees he fired about the FBI's criminal investigation. As a result, they find out about the FBI investigation only when Dee Dee Meyers reveals it at the normal press briefing that afternoon. The employees are humiliated by this. The daughter of one asks him, "Dad, did you do anything? Is there really something to this?"

After the terminations, President Clinton does his best Pontius Pilate routine. On the day of the firings, he says: "All I know about it is that I was told that the people who are charged with administering in the White House found serious problems there and thought there was no alternative. I'll have to refer to them for any other questions. *That is literally all I know about it. I know nothing else about it."* (Emphasis added.) This, of course, is a lie. Ordinarily, this is harmless enough for a politician and certainly routine enough for Clinton. But failing to admit the lie now that David Watkins has spilled the beans on Hillary's role in Travelgate has the unfortunate consequence of leaving his wife holding the bag. But he doesn't know that then.

Clinton changes his story only six days later, on May 25, 1993, revising his lie to admit part of the truth: "I've told you all I know about it. *All I know* is that there was a plan to cut the size of the office, save tax dollars, save the press money." (Emphasis added.) Clinton changes his story again the next day and compounds his previous lies: "The press complained to me repeatedly about being gouged by the White House Travel Office. I kept hearing it everywhere." Right. Everywhere. So why couldn't Clinton's Justice Department find any media organization to testify to this effect in the embezzlement case against Billy Dale, who was acquitted in November 1995 by a jury in record time?



FBI agents and IRS agents thoroughly investigated all seven Travelgate employees after their termination, including contacting their neighbors. Two days after Billy Dale's daughter got back from her honeymoon, she was called by the Justice Department and had to explain where she got the money to pay for her wedding and reception.

June 1993. Clinton and Attorney General Janet Reno write to Chairman Jack Brooks of the House Judiciary Committee and pledge a full investigation of Travelgate by the Justice Department. Senate Minority Leader Bob Dole calls for a special counsel to look into Travelgate.

July 1993. The White House releases the report of its own internal investigation of the firing of the seven employees. On July 20, the House Republican Policy Committee also calls for a special counsel. Later that same day, Vince Foster, the person responsible for calling in the FBI, is found dead in Fort Marcy Park. The "suicide note" left in Vince Foster's briefcase in the White House office states, among other things: "No one in the White House, to my knowledge, violated any law or standard of conduct, including any action in the Travel Office. There was no intent to benefit any individual or specific group."

November 1993. Five of the seven employees (except Gary Wright, the assistant director, and Billy Dale, the director) receive letters from the Justice Department saying they are not criminal targets. Their lawyers contact the White House, and jobs are found for them elsewhere in government.

April 1994. The White House submits answers to Travelgate questions from the General Accounting Office and claims Hillary "had no role in the decision to terminate the employees."

January 1996. David Watkins's memo regarding Hillary's role in the Travel Office firings is made public. Mrs. Clinton claims that Watkins misconstrued her "mere expression of concern" over the Travel Office. The president's Paula Jones lawyer, Robert Bennett, goes on national television and continues the White House smear campaign using a proposed misdemeanor plea bargain from Billy Dale improperly leaked by Clinton's Justice Department. Clinton is impressed by Bennett's performance and asks him to take a more active role in defending the White House on Travelgate. The Travelgate Seven testify on Capital Hill. Clinton agrees to sign a GOP bill paying all legal expenses of the Travel Office employees—in excess of $400,000. The president, apparently realizing that Justice Department rules have been broken again, reverses himself and publicly rebukes his lawyer Bennett for "objectionable" comments about Dale's proposed plea bargain. The GAO issues a critical audit of Clinton's new Travel Office, finding that it failed to balance its books during the first eight months of 1995, neglecting to record some $200,000 in deposits. Meanwhile, Hillary is interviewed by Maria Shriver on national television and further smears the reputation of the Travelgate Seven by falsely claiming "financial misman-

agement" was the reason they were fired:

Mrs. Clinton: "I have consistently said when reports about financial mismanagement in the White House Travel Office were first raised, I and others said, my goodness, you know, that sounds like something that needs to be examined. Other people did the work of determining that *indeed there was financial mismanagement.* Other people—appropriately, the chief of staff, and others under his authority—made the decisions. But I don't have any apologies for in any way saying I've heard there are reports of financial mismanagement."

Shriver: "But did you want those people fired? Did you think that was appropriate?"

Mrs. Clinton: "You know, *once the accounting firm found that there was financial mismanagement,* the White House, I believe, acted the only way it could have. Now there have been—"

Shriver: "By firing the people?"

Mrs. Clinton: "Well, yes, by saying, you know, *we have found evidence of this."* (All italics added.)

Hillary doesn't have a prayer of keeping a libel case from reaching a jury. Repeating to Maria Shriver the lie that the audit discovered financial mismanagement, and this was the reason the employees were fired, was not her finest moment.

My goodness, indeed. Hillary, you sure do make it tough on your lawyers. We're starting to believe Robert Bennett earns every penny of the $400 an hour he's charging you and the president over the Paula Jones indiscretion. Oh, well, on to the task. Tortious interference, intentional infliction of emotional distress, and defamation. Can we get her off? Perhaps. If she pays attention, takes careful notes and listens to her lawyers, some of the claims against her could be knocked out of the box before she ever has to face a jury of her peers.

The most worrisome claim would be the one alleging tortious interference with employment. As a private citizen, Mrs. Clinton was not privileged to intercede in White House employment decisions. If there is credible evidence she did—and Watkins's memo is enough for that—then a jury is going to have to decide who's telling the truth.

This is not good. Hillary needs to come clean, to reconsider her mere-expressions-of-concern posture. And the way to do this goes against her ambitious, über-feminist grain like lacquered nails on a chalkboard. She must invoke a defense as traditional as country-fried steak in Arkansas. She must *blame her spouse*: "It was my husband's fault," Mrs. Clinton should say. "It was Bill who was deeply involved in the Travel Office conspiracies. It was Bill who met with Thomason in February and March, and twice during the week of May 10. We talked about it at night. Everybody knew it was Bill, even that turncoat, Janet Green. I didn't get involved until May 10, and then only because Bill wanted me to. I was just relaying Bill's concerns. I was only a conduit, a buffer. What do I know about government airplanes or charters or the press being gouged by the Travel Office? Why the hell would it matter to me if the press were being gouged anyway? Like I care?"

Look what the truth does. Instantly, Hillary's off the hook for tortious interference. Her husband, the president, had every legal right to interfere with the employment of the seven staffers. After all, he employed them, and he has immunity for firing them. Mr. Clinton, for his part, should then say something to the effect of: "You know what? She's right. I did it, and I'm glad. What are friends for?" Sure, the president will have to confess that he lied about Travelgate in 1993, but it won't be a new experience for him. He'll get over it. It might even help his re-election, demonstrating his devotion to family values by saving his wife. The conservatives will love him for his chivalry.

Our defense to an emotional-distress claim is similar. The outrageous and extreme nature of the firings, the improper use of the FBI and IRS, the rumor spreading, and the humiliating expulsion from the White House form the gist of this charge. In her defense, Mrs. Clinton must again come clean and *blame the men*: "It's not my fault. Vince Foster called the FBI in. It's his fault. I told him it was wrong. I knew it was wrong because of my service as a congressional staff lawyer during the Watergate hearings. Vince felt badly about it, too. He even mentioned it in his suicide note. As for the humiliating manner in which the Travelgate Seven were fired, that's not my fault either. It's Watkins's fault. I know he tried to blame it on me in that self-serving memo where he says, 'In light of the First Lady's insistence...the abrupt manner of dismissal...was the only option.' But that's a bunch of crap—or rather, I mean, my goodness, people know that's not my style. I'm much more sensitive. I even sent birthday cards in late 1993 to two of those poor, unfortunate little people that my husband wanted kicked out in the cold to benefit Thomason and Cornelius—boy, did Watkins have her pegged right. But that's the only thing he had right. If I had been in charge instead of the incompetents my husband had around him in 1993—you notice they're all gone now, every one of them—we wouldn't be in this fix today."

See? The truth gets Hillary off on the emotional-distress claim as well. Now for the defamation. Well, maybe not. We only agreed to devote 4,000 words to our *pro bono* legal strategy, and REASON seems disinclined to give us any more space. This is a good thing, because the truth won't save her this time. She doesn't have a prayer of keeping a libel case from reaching a jury. Repeating to Maria Shriver the lie that the audit discovered financial mismanagement, and this was the only reason they were fired, was not her finest moment. If Hillary wants to be defended on this, she ought to go see the lawyers who gave her advice before the Shriver interview.

On second thought, since the truth won't help her here, what Hillary really needs is the same stall-and-delay approach being used in the Paula Jones case. Tell her to call Bob Bennett. R

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ELDER STATESMAN

He was a promising young lawyer when he quit to start a business. It thrived. So he sold it, moved across the country, and became Los Angeles's most controversial talk radio host. When Larry Elder talks about opportunity, people listen.

Interviewed by Nick Gillespie and Steve Kurtz

Larry Elder may be the Next Big Thing in talk radio. Not only that, the 43-year-old self-styled "Sage from South Central" may be the next—if not quite the first—libertarian host to boast a national listenership. Over the past two years, Elder, who appears weekdays on Los Angeles's KABC/790 from 3 p.m. to 7 p.m., has gained a wide and growing audience by pushing libertarian views on everything from drug legalization to gun control, prostitution to public school education, gambling to taxes, affirmative action to government pensions. He delights—and infuriates—audiences with outspoken opinions, in-depth knowledge, satirical impersonations, and good-natured humor. Many of his shows revolve around racial issues and his basic message—despite racism, hard work pays off—en-

rages and engages listeners who alternately brand him an Uncle Tom and a truth-teller. He has recently come under attack by a South Central–based group that branded him "without doubt, the most racist, anti-Black talk show host in Southern California." The Talking Drum Community Forum has called for an advertising boycott of Elder's show, resulting in some sponsors pulling their ads—and others publicly supporting the controversial host. Meanwhile the whispers about syndication deals—for both radio and television—keep growing louder.

Although born and raised in Los Angeles, it's been a long round trip back home for Elder. After graduating Crenshaw High School, he entered Brown University (with, he readily admits, a boost from affirmative action). From there, he went on to University of Michigan Law School and a job with a prestigious Cleveland firm. Stifled by the lock-step progression of the legal profession, he created his own successful legal headhunting business. After 15 years, Elder turned the day-to-day operation over to an associate and began immersing himself in the classical liberal canon, and reading other books he'd always meant to read. He also landed a job hosting a PBS public affairs show and, later, a talk show on Cleveland's Fox affiliate. A chance meeting with L.A.-based radio and TV personality Dennis Prager led Elder back to the City of Angels, whose residents have been paying close attention ever since.

Elder spoke with Senior Editor Nick Gillespie and L.A.-based writer Steve Kurtz at the magazine's offices late last year. Elder is a lively, energetic personality; after two hours of conversation, he started asking *us* questions. He blends hard facts, personal anecdotes, intellectual honesty, and a good dose of humor into excellent conversation.

■ ■ ■

Reason: Journalists usually call you a "black conservative." You've described yourself at various times as a Jack Kemp–style "bleeding-heart conservative" and as a "libertarian." So which is it?

Larry Elder: As we use it right now, the term *conservative* typically means somebody who wants to reduce spending, reduce taxes, reduce the size of government. But it also has come to mean somebody who feels that government has an active role to play in our private lives. So, if that's the definition of a conservative, that ain't me.

What I *am* is somebody who believes that government is way too big, and people are being taxed way too much. The government is assuming responsibilities it should not be assuming. The government is intruding in our private lives. Republicans ought to be talking about ending farm subsidies. They ought to be eliminating the Departments of Education, Energy, and Housing and Urban Development. They are taking a pocket knife to a problem that requires a machete.

Social Security should be part of it, too. To me, it's an improper role of the government to take current workers' money and give it to somebody else. I would like private safety nets. This would have to be done in the context of the dramatic reduction of taxes so people have more disposable income.

I'm very critical of Republicans, but I understand the politics of reality. The fact is that people talk out of both sides of their mouths. They say on the one hand they want the budget to be cut and on the other hand, don't cut my stuff. *Don't take my homeowner deduction away. My old man is on Medicare—don't take that away. I got an aunt that's on Medicaid, don't take that away. I want to keep Legal Aid.* People talk out of both sides of their mouths.

"What I am is somebody who believes that government is way too big, and people are being taxed way too much. The government is assuming responsibilities it should not be assuming. The government is intruding in our private lives."

Reason: Are you a registered voter?

Elder: I'm a registered independent.

Reason: How did you come by your beliefs, what were your influences?

Elder: I've been accused of being a late convert to conservatism because it's "hot." It's a marketing edge in radio and as a *black* conservative, it's man bites dog. I went back and got some of my old high school papers, one of which was a book report on Booker T. Washington's *Up From Slavery*. This was in 1968. I set up the term paper by saying that my classmates refer to Booker T. Washington as an Uncle Tom but he was anything but. He used to talk about self help and not relying on government and hard work wins. That philosophy is the core of what I believe right now.

I was born in the Pico-Union area, which is primarily Latino. And then when I was 7 years old, I moved to South Central, not too far from where Reginald Denny was beaten. My father was a school dropout raised in a single-parent household. He was effectively thrown out of his house when he was 13 years old by his mother and her then-boyfriend and began working. He was a cook boy, shoeshine boy, hotel bellhop. He went into the service where he learned how to cook, came out, and went home to the South to get a job as a short-order cook and nobody would hire him. So he moved to California because he thought people were more liberal. Nobody would hire him. For the whole time I was growing up, my father worked two jobs as a janitor, and he cooked for a private family on the weekends, and he went to night school to get his GED. He was a bad ass. He was the hardest working man I've ever known. That was my role model. My father was never home and when he was home he was in a bad mood. He had a work ethic that was beyond belief.

My mother had one year of college, which for a black woman of her age—she's 70 years old—is like having a Ph.D. from Harvard. She was an avid reader and she always worked with

me. My mother told me that I was going to go to Stanford when I was in third or fourth grade. I didn't know what it was.

My father is a Republican. He's the only black Republican I ever knew and until I got into practicing law I never met another one. So I always heard another point of view. My mother was a Robert Kennedy/John Lindsay kind of liberal. She has evolved as most people do when they get older. But over the dinner table, I would hear both sides. I think Republicans and Democrats essentially have two very simple philosophies. Republicans believe hard work wins. Democrats believe the system is rigged. And from that premise, I think, their policies flow.

"There is a seething feeling that is fanned by black leadership that the system is rigged—"They're out to get you"—the great white oppressors will strike you down when they have an opportunity. That's the way a lot of blacks feel and it cuts across economic class. Blacks for the most part believe that racism remains a huge problem in America, that America remains corrupt, and the criminal justice system remains corrupt."

Reason: So do you think the '94 elections were meaningful?

Elder: Absolutely. They were a sea change. They said to both chambers of Congress, "We've had enough. Government is spending too much."

Reason: Do you have any hopes for the '96 elections?

Elder: It looks bad.

Reason: Any particular candidate you'd endorse?

Elder: Yeah, Margaret Thatcher. And you work out the logistics of that. With Jack Kemp as vice president and I'm there.

Reason: What do you like about Kemp?

Elder: Well, he never should have taken the job [as secretary of housing and urban development] unless his intention was to shut the agency down. He is ideologically impure the way all of them are. But Kemp is talking about growing the economy as a way of alleviating poverty and alleviating pain. That's a positive message. That's a very powerful message.

Jack Kemp cares. The fact that he went into the inner cities and talked to them about hope and investing in their own neighborhoods. That's the kind of rhetoric that I think convinces blacks that major issues in the country—such as how we spend our money and to what extent people are taxed—have a direct impact in their own lives. He is able to convince people of that.

Reason: You say you admire Kemp because he gets blacks to invest in their own communities. But in a piece you wrote for the Cleveland *Plain Dealer*, you once skewered the very idea of race-based commerce. Is that inconsistent?

Elder: I don't think it's inconsistent. What I am critical of is anybody that says, "Patronize my business because I am black, because I am a woman, because I am a Jew, or because I'm anything." You should patronize me because I offer the best damn service or the best damn product there is. That is not inconsistent with imploring people to start businesses in their own neighborhoods. And so to the extent that Jack Kemp is saying that, I think it's a good message.

Then again, I once got a letter where someone said, "I tailor shirts and I'm a black guy who started this business tailoring shirts. Why don't you write down your shirt size, your sleeve size, and give it to me? That way you'll be supporting black businessmen." Well, that's just crap. Tell me it's cheaper, tell me it's going to be more convenient for me, but don't try to make me feel guilty and get me to patronize you just simply because you're black, any more than you would like if McDonald's argued, "We're a white-owned business so white people should report to our business."

Reason: What's the state of race relations in the United States?

Elder: Essentially, they're excellent. In our quotidian, day-to-day lives, people get along just fine. You walk up to the store and you see an integrated line. There's a black checkout clerk there and you get your stuff processed. We're all getting along just fine. Most middle-class blacks live in integrated neighborhoods.

Reason: But if you go to Chicago, or Detroit, or Los Angeles, segregation is still everywhere.

Elder: So what? Frankly, people choose to live where they're comfortable. I mean, if the housing patterns were a result of discrimination on the part of real estate agents then that's one thing. But I see no evidence of that. Most of my friends who live in the Baldwin Hills and View Park areas of Los Angeles—which are predominantly black bourgeois areas—chose to live there because they want to live with other black people.

Reason: So you don't think there is redlining in real estate and bank loans?

Elder: It's crap, nonsense. Does redlining exist in the sense that there are certain geographical areas where insurers are less likely to insure, or people are less likely to live or invest in? Yeah, but there are also economic reasons for that. When you burn down your neighborhood, that's going to make insurance companies a little skittish. When [Rep.] Maxine Waters [D-Calif.],

having witnessed a conflagration, refers to it as an "uprising" or "rebellion," rather than as a riot, and I'm in an insurance company and I'm listening to this, I'm a little concerned.

When I talk about blacks and whites getting along well, I'm talking about *interaction.* Is there a gap between the way blacks view America and the way whites view America? Absolutely. A huge gap. That's the significance of the O.J. Simpson trial. It shows how very differently blacks view the amount, extent, and intensity of racism in the country. I was struck by a Times Mirror poll that asked blacks to respond yes or no to the following question: In America, if you are willing to work hard, you can prosper. It was something like that. Blacks earning $50,000 a year or more said no to that proposition *more* frequently than did lower-class whites.

Reason: What explains that?

Elder: What explains it is a seething feeling that is fanned by black leadership that the system is rigged—"They're out to get you"—the great white oppressors lurk in the corner and will strike you down when they have an opportunity. That's the way a lot of blacks feel and it cuts across economic class. Blacks for the most part believe that racism remains a huge problem in America, that America remains corrupt, and the criminal justice system remains corrupt.

Reason: But didn't the O. J. Simpson trial show there are racist, incompetent cops?

Elder: Are there racist cops? Yeah. Are they pervasive? Not even close. Who's the bigger danger to blacks: the vicious minority of young black punks and thugs that terrorize the overwhelming majority of law-abiding innocent people in the inner city or the Mark Fuhrmans of the world? The burglar bars on every third house in the inner city aren't to keep Mark Fuhrman away.

Reason: But what about racism? What about something like the Denny's case, in which black Secret Servicemen were refused service?

Elder: A guy called me up the other day on the show. He was a black guy, owns his own business, and he flies first class all the time. On three occasions while flying, he feels he was a victim of discrimination. I say, "Tell me about one instance, sir." "Well, the plane was overbooked," he says. "A stewardess came up to me and she said, 'Sorry, sir, let me see your ticket.' I showed her my ticket, it was seat four, and she said, 'Well, *this* gentleman has seat number four.' She asked me to give it up." I asked the caller, "Did you give it up?" He said no. So he didn't give it up anyway. *That* was his evidence of discrimination while flying first class. I said, "Well, how do you know what went on in the stewardess's mind? Maybe she saw somebody who was less likely to give her a hard time, maybe because you're soft spoken, maybe because you're diminutive. I don't know. You don't know."

But let's assume that it was racism. I asked the caller, "How many years have you had your business?" "Seven years." "You fly first class all the time." "Yeah." "How many times would you say you fly a year?" "Three times, four times, a month." "So we're talking about 30–40 times a year, times seven. So you've flown first class 300 times and you've named three incidents that have happened to you that you think are racist. So 297 times nothing happened." So what are we talking about here—or when you mention the Denny's thing? How many times do you suppose the Secret Service agents have gone into a restaurant in their lives, how many times have they been refused a seat? So, it happens one time. These guys are probably 40 years old. So we go to war for that? I mean, I don't get it.

The other part of the equation is black paranoia, which is rampant in this country. Maya Angelou was interviewed on David Frost and she said that she's an avid *Jeopardy!* watcher, as am I. She said that she watched *Jeopardy!* and, in the last two years, she hasn't see a black person on it. I watch it and I've seen a number of blacks. Not commensurate with the population of blacks, but certainly a number of blacks, and a black kid almost won the teen tournament. So she's just flat out wrong. More important is the implication that Alex Trebek and the boys are somehow conspiring to prevent qualified black applicants from getting on *Jeopardy!*, even though we know that *Wheel of Fortune*, which is produced by the same people, has lots of black people on it. It's just absurd. As I say on the air, another chapter of the continuing saga called *In Search of the Great White Oppressor.*

That rhetoric has got to stop, the constant search for the great white oppressor has got to stop. A lot of this anger coming from inner-city blacks stems from a prevailing theory that the greater society not only doesn't even care about blacks, but actively seeks to hurt them. When Maxine Waters calls the L.A. riots an uprising; when she says, "no justice, no peace"; when Jesse Jackson suggests that the difference between crack and powder is evidence of a racist criminal justice system; when Al Sharpton stands up before the Million Man March and says that O.J. is "home" now and that there are hundreds and thousands of black people behind bars and we can't rest until they are home, too; when people like Maya Angelou make the remarks she made about *Jeopardy!*; when people like Bill Cosby suggests that he "has a feeling" that AIDS is part of the plot to exterminate the black race—my point is that nothing's going to change much until black leaders stop such reckless, careless, conspiratorial nonsense. Say you're a 9- or 10-year-old kid who wants to study and you just now hear Bill Cosby say that AIDS is a government plot against blacks, or Al Sharpton say that black people are thrown in prison for no apparent reason, or you hear that Alex Trebek discriminates against qualified applicants for *Jeopardy!*, you're going to figure, what's the point?

Reason: You're skeptical of the very notion of "black leaders," aren't you?

Elder: Yeah, the whole thing is kind of condescending. As I've said on air, who is the German-American leader? Who is the Italian-American leader—in the sense of having a point of view, a perspective advocating a set of policies that are going to be beneficial to that group? When Antonin Scalia was nominated for the Supreme Court, there were lots of articles about how proud Italian Americans were of him. But with blacks, it's always like, "Here is a savior, here is somebody who is going to really set the record straight." Jesse Jackson is perceived as a savior. Al Sharpton is perceived as somebody who is down with us, out for us, backing us up.

Here's a microcosm of a lot of things that we're talking about: Jesse Jackson and Al Sharpton saw the different penalties for crack cocaine and powder cocaine as Exhibit A that the criminal justice system is racist. I'm not saying I accept the different penalties. Unlike Jackson or Sharpton, I think the drug war is bogus. Philosophically, I think that if somebody wants to sit around and get stoned that's up to him or her. And if that ruins your life, so be it. Any government intrusion ought to be viewed with great skepticism and this is another example of that.

On a practical level, add up all the costs of the drug war: all the people robbing and maiming and shooting and stealing in order to get money to support their drug habit, lost work when your car gets stolen by somebody who wanted it because he or she wanted to sell it for drugs, police protection, border patrol. William F. Buckley estimates that the drug war is costing the American taxpayers $205 billion a year. Our prisons are full of people for drug trafficking, many of whom never committed a violent crime.

So I'm for drug legalization. But if you are running a war on drugs, don't tell me that different treatment for crack and powder *has* to stem from racism. The fact is that many people believe that the crack trade is a violent trade. It certainly can be proved that in the mid-'80s, when crack became a drug of choice of the inner city, murders went up.

Reason: So how do you get out of a cycle where all discussion is focused on race, whether or not it's relevant?

Elder: To straighten out race relations, whites have to stop condescending to blacks. They have to tell blacks frankly and candidly why they are scared: "We're scared because 45 percent of those arrested for violent crime in this country are black. I'm scared because I've been mugged by a black person. I'm scared because my purse has been taken by a black person. I'm sorry, but when I go into the inner city and interact and go to Raiders games, I've had some negative experiences. That is why I am afraid." That's not irrational, that's dialogue. But whites don't do that. They either deny it or don't want to talk about it or they say something very condescending: "It's horrible that I feel this way, it's terrible, but I don't know, I'm fighting the feeling." It's a horrible, horrible condescension that comes from whites that prevents blacks from confronting the truth.

Here's what I mean about condescension. A third of all blacks believe that AIDS is a plot against them. Why aren't scientists—white and black—writing op-eds to the *Los Angeles Times* saying this is bullshit? Why are white people rolling over and playing dead when blacks make assertions that are just totally unfounded and offensive? To me, it gives it an aura of legitimacy. And I submit to you that at kitchen tables across America, black kids are listening to mommy and daddy talk about these kinds of things as if they are plausible and you leave the table with an attitude that you can't do anything anyway.

Reason: Wasn't there a time when the system was rigged?

Elder: Yeah. It's not anymore. And that's a problem when I make the argument that I just now made to you. I frequently get a phone call from people who say things like, "Well, what about Emmett Till?" or "My great-grandfather tried to vote one time and they told him not to vote." Well, fine. You can regale me with a lot of stories, but we're talking about 1995.

Reason: You've written that America owes a debt to blacks and that 30 years of affirmative action hardly makes up for slavery and Jim Crow. But you're against affirmative action. What pays off the debt?

Elder: America owes a debt to black people: When blacks were freed they should have been compensated, but they weren't. There's nothing that can be done about that now.

I think what America has done in paying on this debt is affirmative action. And frankly, that's 30 years of failing to hold blacks to the same standards of behavior as they would expect their own sons and daughters to adhere to. What America owes black people is a statement that we are going to evaluate you based on your talents. America owes the commitment not to discriminate. All a state can be is just in its own time, and America must attempt to be just in *its* time.

Reason: By your own admission, you've benefited from affirmative action and it didn't turn you into a self-hating individual. So what's wrong with it?

Elder: I think there was a statement to be made: The welcome mat is here. A lot of institutions historically discriminated against blacks and for a certain period of time, to demonstrate our sincerity and our commitment, it was appropriate to vary standards to achieve some degree of diversity.

Reason: Did you benefit from having lower standards?

Elder: I think it is likely that my résumé would've looked different if I was subject to the same standards as everybody else. Having said that, I did very well on my SATs.

Reason: How do you think you would have done without affirmative action?

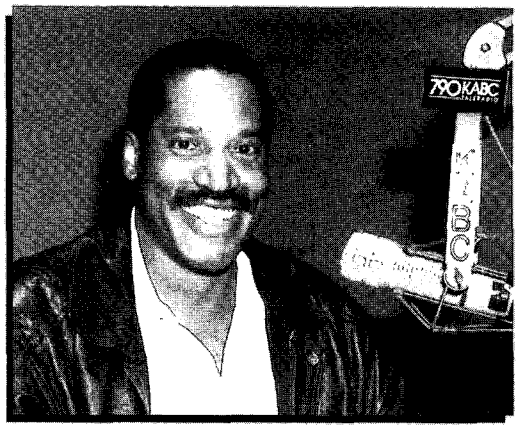
Elder: I graduated number seven in a high school class of 250. Not number one or two, but it ain't bad. I certainly would've gotten into a competitive school regardless of my race. I am prepared to admit that I benefited from affirmative action. I am not prepared to admit that I would have been jobless, homeless, and illiterate had affirmative action not been in effect.

One of the problems with affirmative action is that it has primarily benefited people who are already prepared. What it did for me was to kick me from one level into another level. Without it, I wouldn't have gone to Brown—I probably would've gone to a Big Ten school. But it ended up creating higher failure rates, too. When I was in Brown, a disproportionate percentage of blacks failed. Many of them came from schools that were not as good as mine. I could tell by how little most of the other black kids read, how little math they knew, that they weren't going to be able to make it—and they didn't.

So what happened? You grab a bunch of people who would've been successful at a certain school and put them into a sort of blue-chip track, a great percentage of them fails, and they get very angry. The kids at Brown were falling behind and all were pissed off. They were confused. Their attitude was, "If you weren't going to let me make it, why'd you put me here?" It wasn't said that way but that was roughly the general feeling. And I saw the same attitude when I was at Michigan Law School. The statement that the door was open had to be made, but I wonder whether it was worth it.

Reason: You're against affirmative action quotas but you do support anti-discrimination legislation.

Elder: Morally, quotas cannot be defended. Even Hubert Humphrey—who did a lot of the heavy lifting for civil rights legislation—did not perceive a need for race-based affirmative action. I am really quite torn. As I said earlier, a statement had to be made. But why should some 18-year-old white kid who did very well on his SATs and whose father came from a blue-collar background be penalized because we now think UCLA should have a particular statistical population of blacks and Latinos?



"I am prepared to admit that I benefited from affirmative action. I am not prepared to admit that I would have been jobless, homeless, and illiterate had affirmative action not been in effect. Without it, I wouldn't have gone to Brown—I probably would've gone to a Big Ten school. But it ended up creating higher failure rates, too. When I was in Brown, a disproportionate percentage of blacks failed."

Why should the 18-year-old be screwed because of that? I find it very difficult to defend that.

In terms of employment, I favor the current laws that we have, which say that if there is evidence of discrimination based on disparate impact, the burden of proof should shift to the employer. The employer could disprove if he or she had discriminated. I am willing to accept that intrusion because I think it is so important to say to people that we, the government, will not tolerate discrimination.

Should there be some sort of mandatory affirmative action program, even in the public sector? Absolutely not. That's one of the things I find curious about this whole argument. The California Civil Rights Initiative would not affect the private businesses at all. Almost all of the Fortune 500 companies have affirmative action policies. They have them for two reasons. First, most of them do business with the government. The government compels you to have some sort of affirmative action plan. The office of federal contract compliance comes through from time to time and asks how many blacks you actually have here. So they have to do it anyway. They shouldn't have to, it's wrong, but it's there. The other reason most private companies have affirmative action policies, though, is because it is just good business. When you are buying pantyhose and the consumer reads an article by the president of the National Organization for Women that this manufacturer of pantyhose discriminates against female executives, that manufacturer is in trouble. That, to me, should be the role of organizations such as the NAACP, the Urban League, etc.—the service of the watchdog.

Reason: But you do reject the idea that the free market will eliminate racism. And you think that the government should police marketplace discrimination?

Elder: Yes. I was in the headhunting business for 15 years. I have a friend who is in a similar business. She has clients that have told her not to send over black people: "Don't send me somebody black no matter how qualified. I don't want them in my house." She has told me this. I know it goes on. *60 Minutes* did a piece on a headhunting firm in New York. Black applicants were asked to fill out the application in black ink and white applicants were asked to fill out the application in blue ink so that counselors could identify the race of the applicant.

Reason: And they shouldn't be allowed to do that?

Elder: No.

Reason: Now you're contradicting what you said earlier. Aren't you saying that government is needed to stop racism?

Elder: Why do we have laws to tell people not to do certain things? I mean, the fact is that most people are not going to murder, but it doesn't mean we shouldn't have a law that says don't murder. Most people aren't going to discriminate but that doesn't mean we shouldn't have a law saying you can't do it. There is some discrimination. Is it anywhere close to where Jesse Jackson thinks? Of course not. Is it anywhere close to what Maxine Waters is saying? No. Should we have a law that says that UCLA must admit people based on race or based on sex? No. But does that mean we should remove all laws in the books that would prevent ABC Corp. from summarily refusing to accept applications from a qualified black applicant? No, we should have a law that prevents people from doing that. Just like we should have a law that stops Joe's Eatery from preventing black people from coming in and sitting at the lunch counter. I recognize that's an intrusion to Joe's business, and that's the price that we pay in our society for having had historic discrimination, for being a sort of sick society where people are going to be skeptical about the rules. I should add that I think the threat of lost profits from discriminating is one of the reasons why I'm so adamant about the relative lack of racism in the marketplace.

Reason: Once upon a time you were a successful young lawyer in Cleveland. How did you get into radio?

Elder: People thought I was insane. I was doing extremely well at Squire, Sanders & Dempsey. I was well liked at one of the best law firms in America—at the time it was the ninth big-

gest law firm in the country. I wanted to make more money and I wanted to make it faster. What bothered me about the law firm was that you're in lock step. You can be the baddest guy in town and next year you'll be a second-year associate. You can be the baddest second-year associate in town, and next year you'll be a third-year associate. I didn't like that. I thought I was more talented and should be accelerated much faster. That was an unacceptable attitude to have in that system. I wasn't upset about it, that's just the way it was.

I always wanted to be paid for doing what I'm doing now. I wanted to be paid for thinking, for writing, for making commentary, and I knew that was a rough, tough way to go and that there probably wasn't a lot of money in it initially. I wanted to put myself economically in a position where I would then spend the time to pursue that—that required money. I didn't have enough devotion to just chuck it all and write for small-time publications and try to get a career that way. I wanted to make money, put it away, get a house, get a car, have a stock portfolio. I left the firm after three years, then I started and operated a legal headhunting business for 15 years. After having it for about six or seven years I put the day-to-day operations in the hands of the number-two person and I began reading and writing. I auditioned for and got a television show on PBS, which I hosted for six years. I can't say I had a *plan*. I literally picked up the phone and talked my way into getting this audition on PBS and they hired me. They just happened to be looking for a cohost.

> **"The Denny's thing? How many times do you suppose the Secret Service agents have gone into a restaurant in their lives, how many times have they been refused a seat? So, it happens one time. These guys are probably 40 years old. So we go to war for that?"**

I also starting writing opinion pieces for newspapers. I would send them to the Cleveland *Plain Dealer* and they would get rejected. I'd send another one and it would get rejected and then one got published and then the next three or four got rejected and then one got published and pretty soon, I began to develop an informal group of newspapers that would run my stuff.

Reason: And you read. What were you reading?

Elder: People I always wanted to read and had never had the chance. I read Ludwig von Mises, Friedrich Hayek. I read *Huckleberry Finn*, *Tom Sawyer*, Somerset Maugham, lots of things. I had never really read a lot of Ayn Rand. I read *The Fountainhead*. *Brave New World*. I just took off and read stuff I never had a chance to read. So I'm just cruising along, preparing for my weekly show on Fox, writing columns. I wrote a screenplay, I wrote a television series.

Then I began getting invited on radio shows as a guest because of some of the columns I had written, ones mostly to the effect that racism is not the problem in America—my pieces were usually pretty incendiary. A guy invited me on his show and tried to rake me over the coals and I kicked his butt. His programming director called me and asked me if I'd like to fill in for the guy when he went on vacation. I told him I'd think about it. I went home to my then-wife (I'm divorced) and I said, "They want me to do this radio thing for a week. She said, "What do you think?" I said, "I think of talk radio as facile, glib, superficial, and shallow." She said, "I think you'd be good at it."

So I sat in for this guy for one week and I had been reborn. It was just an incredibly exhilarating experience. I sat in a little room. It was gray and sort of dark and lights flipping, this microphone there and nobody else there. I asked the engineer, "I can say anything I want and get all the things off my chest that have pissed me off, right?" He said, "Yeah." So I let it rip. And I talked about many of the things you and I are talking about now. I made tapes and took out the best 20 minutes or so and squashed them together and sent them to the top talk stations in Washington and Los Angeles—the only two cities that I would consider moving to. I followed them up, nobody cared. I wasn't surprised. I didn't think that one went from four or five days guest hosting to prime time radio in D.C. or L.A. I wasn't surprised, or disappointed, or pissed. Nothing ventured, nothing gained.

At the time—this is 1992—I also appeared on a local show called *Morning Exchange* as legal expert on employment matters. I came in one day and Dennis Prager, the TV and radio show host, was a guest and as they were undoing the mike I overheard someone say to Dennis, "When are you going back to Los Angeles?" I introduced myself to Dennis, told him I was from Los Angeles originally and what I was doing now. Dennis told me to send him my stuff and to get in touch with him the next time I would be in Los Angeles, that he'd put me on his show. When I got out there around Christmas, Dennis, true to his word, put me on. He told me I would be on for 15 minutes. I was on for two hours.

Then I was back in Cleveland and I wrote Dennis a very nice letter, carefully worded, and asked if he'd be so kind as to mention me to management. Dennis did and put me in touch with the program director, who never would return my calls. So December 1993 rolls around, and I was back in L.A. and he put me on the show again. Again for two hours. This time the president and general manager of the station heard me. I flew back to Cleveland and literally just as I walked into my office, [KABC Station Manager] George Green is on the phone. He said, "I heard you and you have the three things we look for in a talk show host: You take a position, you can defend that position intelligently, and have a sense of humor. The combination is awesome. Will you come back here and sit in for two nights for somebody?" So I got back on the plane to Los Angeles. Literally, I sat in for one night in the 8 p.m. to 11 p.m. spot and the next morning George calls my parents' house where I'm staying and he offers me a job.

Reason: Thank you. ®

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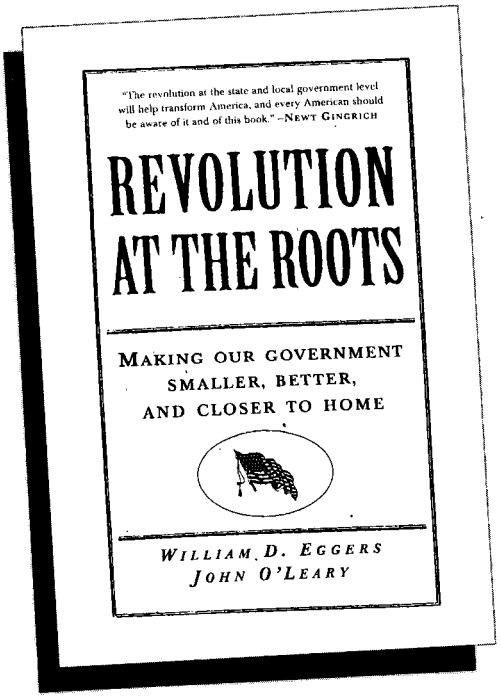
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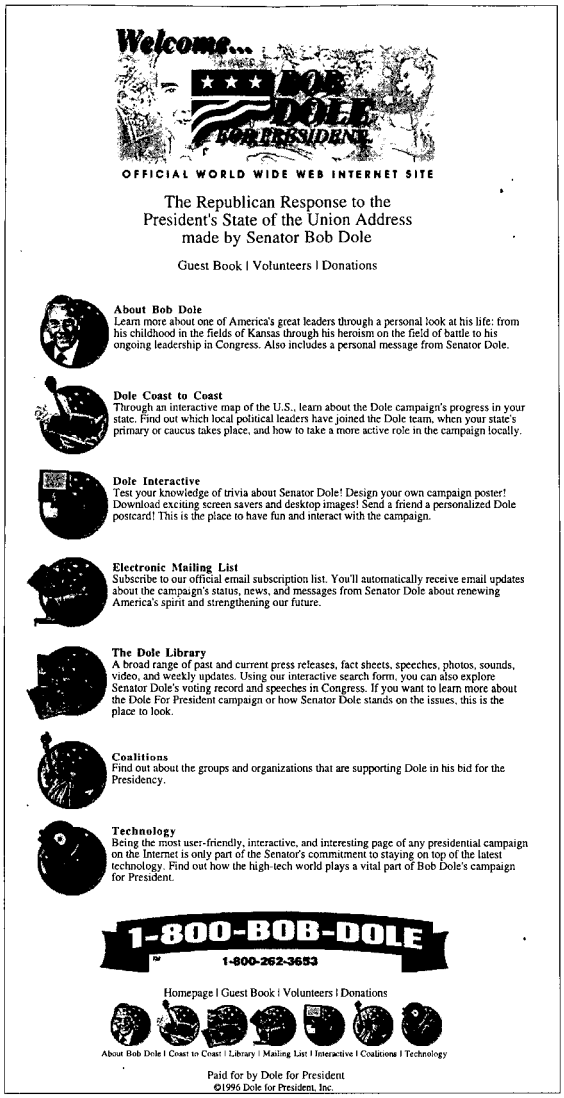
By John J. Pitney Jr.

Political inconsistency goes high-tech.

REPUBLICANS PAN PRESIDENT Clinton for treating his own words not as long-term commitments, but as one-night stands. To turn this line of attack into a winning political strategy, however, Republicans have to show that they are different, that they speak plainly and act accordingly. Such a campaign will falter every time voters catch Republicans in their own fibs, fudges, and flip-flops.

And in 1996, the Internet has enabled ordinary Americans to do just that. Years ago, researchers had to spend hours and days pawing through yellowed newspaper clippings just to document a single evasion. Now, anyone with a reasonable amount of computer skill and political knowledge can conduct an extensive search in a matter of minutes. Candidates have loaded their Web sites with speeches, press releases, ar . policy statements—perhaps not thinking that anyone would actually read the stuff. Other material is available from a huge variety of on-line sources.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The GOP has some problems. A brief scan of cyberspace shows that Republican politicians have not set high standards of consistency on the issues of tax reform, abortion, and federalism.

The Flat Tax: The flat tax has stirred a great deal of interest among Republicans. In its pure form, this proposal would scrap all existing credits and deductions in return for a single low tax rate. (For detailed information on tax reform, check the Joint Economic Committee's site: http://www.senate.gov/comm/jec/general/). One school of GOP thought holds that the idea will appeal to voters who are sick of garbled tax rules and grumpy old IRS bureaucrats. A top presidential campaign proclaims that its candidate "wants a fairer, flatter, simpler tax system so people can fill out their tax returns without a lawyer, an accountant, or both. He will end the IRS as we know it, and curb its abuses of taxpayers."

But another school holds that the current system benefits many voters, and if anything, we need to establish even more tax preferences. One campaign calls its candidate "a leading advocate of family tax relief, such as a $500 per child tax credit, 'marriage penalty' relief, adoption tax credits, IRAs for homemakers, and easing the estate tax burden on family businesses."

These diametrically opposed statements might have furnished the basis for a enlightening debate, except for one small problem: Both came from the Dole campaign. I have not wrenched them out of context, from separate documents issued months apart. The two positions appeared together in a Dole for President e-mail bulletin on January 19, 1996. You can also find them on the Dole Web site (http://www.dole96.com/) under "What Bob Dole will do as our President."

The sheer audacity of this contradiction has theological dimensions. Zen monks spend years contemplating such riddles in order to free their minds from earthly logic.

Steve Forbes has made a more straightforward flat-tax proposal, even though the statement on his Web site (http://www.forbes96.com/) does not directly mention the elimination of deductions. For the most thorough explanation and defense of the idea, a computer user must look beyond the presidential candidates to House Majority Leader Dick Armey (http://www.house.gov/armey.flattax/), whose site shows exactly what a tax form would look like under his legislation.

ABORTION: As 1996 GOT UNDER WAY, pro-choice Republicans lacked a strong voice either on the campaign trail or within the top ranks of the GOP congressional leadership. Among the presidential candidates, Lamar Alexander probably has come the closest to the pro-

choice side, yet if you check his Web site (http://www.Nashville.Net/~lamar)—the one with mock red flannel on the home page—you would not think you had contacted NOW. Click "On the Issues/Abortion" and you find: "The federal government should never become involved with abortion—should not subsidize it, encourage it, or prohibit it....Because I believe that abortion is wrong and that states may restrict abortion, I would characterize my beliefs as pro-life."

The issue may still rock the party, however, because the anti-abortion side faces a serious internal split. Some pro-lifers insist that the GOP must hold fast to every word of its firm anti-abortion platform plank, which remained unchanged between 1984 and 1992. Others argue for a modification, saying that the party can broadly embrace the anti-abortion cause without committing itself to certain proposals that could alienate potential allies.

The platform language is tough indeed, and many of its supporters may not have thought it through to its logical conclusion. The platform endorses "legislation to make clear that the Fourteenth Amendment's protections apply to unborn children." The 14th Amendment secures for everyone "the equal protection of the laws," so under the proposed legislation, state homicide statutes would apply to the killing of fetuses. In other words, prosecutors and courts would have to treat abortion as murder. Women who have abortions, as well as their physicians, would have to go to prison.

SOME HARD-LINERS IN THE PRO-LIFE MOVEment do have the intellectual courage to acknowledge and accept this consequence. For the most part, however, those who support the current language have preferred to avert their eyes from its real meaning. Even Pat Buchanan has blinked. His Web site (http://www.buchanan.org/) includes the full text of a speech titled "A Contract With the Unborn." If you download it and conduct a word search, you will not find the words *jail*, *prison*, or *penalty*. The speech does mention the word *punish*—but only in the context of punishing anti-abortion violence.

To see how Buchanan deals with the penalty issue, one must go to the University of New Hampshire's special site for the state's presidential primary (http://unhinfo.unh.edu:70/unh/acad/libarts/comm/nhprimary/nhprim.html), which has a fine directory of candidate statements on various issues. The directory includes a transcript of a talk radio appearance in which Buchanan said: "I think the woman's a victim in an abortion. I don't believe any of them should be put in jail or punished or chased around or get in their face or anything. My goal is very simple—don't do it, save lives." Fine—but he has specifically pledged his support to the current platform language.

Years ago, researchers had to spend hours and days pawing through yellowed newspaper clippings to document politicians' evasions. Now, anyone with a reasonable amount of computer skill and political knowledge can conduct an extensive search on the Internet in a matter of minutes.

Republican leaders prefer to change the subject when abortion comes up. Sooner or later, they will have to pay attention to what their party has been saying on the issue.

Federalism: Republicans like to recite the 10th Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." They really mean it—except when they don't.

The 1993 Senate debate on the crime bill is especially revealing. The *Congressional Record* transcript of Senate action is available on Thomas (http://thomas.loc.gov), a not-so-user-friendly site run by the Library of Congress. (Leave a good deal of time for scrolling through extraneous material.) During this debate, Senate Republicans supported crime-bill amendments that amounted to a drive-by assault on federalism. With Sen. Al D'Amato (N.Y.), Phil Gramm sponsored an amendment that would have federalized virtually all firearms crimes, and Gramm is still taking credit for the proposal on his Web site (http://www.gramm96.org/). Dole himself sponsored the most excessive provision. The Dole amendment, later scratched in a House-Senate conference, would have made it a federal crime "to participate in, or to conspire to participate in, a criminal street gang, and to induce others to join the gang." In the Dole version of *West Side Story*, the role of Officer Krupke would have gone to Janet Reno.

LEAVE ASIDE THE SILLY PROPOSITION THAT the FBI and DEA are better equipped to handle street crime than local police. The more important point is that, if the 10th Amendment means anything, then the federal government has no business even trying. That concern, however, has not stopped Dole from including a 10th Amendment section on his Web site.

Cynical political handlers may dismiss all these points as academic piffle. They like to repeat the old joke that sincerity is the key to winning elections, and if you can fake that, you've got it made. But in the end, the joke is on them. Voters have always hated it when politicians have trifled with them, and this sentiment has grown more intense ever since President Bush broke his "Read My Lips" promise. More than anyone, Republican politicians should remember that.

In the electronic universe, politicians will find it harder and harder to get away with dissembling. On the Internet, the truth is out there. ®

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Club Medicine

By Jim Christie

Support for medical marijuana is growing, but many patients are not waiting for a change in policy.

SHORTLY AFTER HIS ARREST LAST May, Ronald "Stich" Miller showed off what was left of his marijuana-growing facility and recalled his plants, more than 100 of them, with pride. He boasts that the confiscated crop of "Seattle Blue" clones he was cultivating in a Bainbridge Island, Washington, mobile home could have been featured in *High Times*, the marijuana aficionado's journal. The police who arrested Miller and JoAnna McKee, his live-in companion, were similarly impressed, according to McKee. "The police told us they never had seen anything as clean as our plants," she says.

The police shouldn't have been surprised. Miller and McKee are the founders and operators of Green+Cross Patient Co-op, Washington state's sole above-ground medical-marijuana network, an open secret on the island and in Seattle, a half-hour ferry ride to the east. Earlier in the year, Miller was shown delivering marijuana on a Seattle PBS program called *Health Notes,* in a segment originally produced for the *McNeil-Lehrer NewsHour.* In 1994, McKee unsuccessfully lobbied the Bainbridge Island City Council for a resolution urging local police to deprioritize arrests of pot users with painful medical conditions. The resolution also urged the federal government to permit the use of doctor-prescribed marijuana.

Looking through Miller and McKee's files after the arrest, the police would have seen the signed doctors' letters required by Green+Cross, certifying that the patients had informed their physicians of their intent to seek marijuana from the co-op. The couple also kept a mission statement: "GCPC will not sell cannabis. Instead, it will be given away with the understanding that financial contributions will be accepted and should be sufficient to maintain our operation costs. Persons who are unable to make a financial contribution shall not be denied cannabis because of their inability to pay."

Judging by the middle-aged couple's modest home, from which they were evicted shortly after their arrest, Miller and McKee were not turning many people away. A "Don't Tread on Me" banner next to their front door, which police kicked open to serve a search warrant, advertised their attitude. (In September, a Kitsap County Superior Court judge threw out the county's case against Miller and McKee because police overstepped the limits of the search warrant.) Inside the mobile home, the couple didn't have much in the way of possessions. They are frank about their marijuana use and about why they started Green+Cross. Money wasn't one of the reasons. "In a year's production, if we were providing for the street, we'd be able to make $500,000," Miller says. "We did everything for donation and cost." McKee says patients did not donate any set amount. "It was always pay what you want."

Green+Cross, which had been up and running for a little less than two years before the bust, was well known in Seattle's AIDS community. Shortly after Miller and McKee were arrested, Bill and Jim, partners and co-op members from Seattle, dropped in on the couple for a visit and stayed for an interview I had scheduled with Miller and McKee. Bill and Jim had found out about Green+Cross through an AIDS treatment clinic in Seattle. "A lot of doctors don't really want to talk about it," Bill says. "It was a case worker who slipped a number to me and said, 'You might want to get in touch.' " Neither man has much to lose by getting involved with Miller and McKee. Bill has been struggling with AIDS for nine years, while Jim suffers from degenerative arthritis, prostate cancer, and a history of strokes.

JoAnna McKee and Stich Miller gave away marijuana to people with painful medical conditions. They were arrested last May.

DEBRA LACOPPOLA

The two vouch for the quality of the product provided by Green+Cross. Although his face is gaunt, Bill says he has gained six pounds since he started using Green+Cross marijuana, which helps him with his appetite. Smoking marijuana also helps Bill with another constant of AIDS. "It's like running a marathon, and you ache all the time," he says. "Marijuana helps relieve that feeling." He especially appreciates that Green+Cross's product is, as the police had remarked, "clean,"

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meaning free of molds that can cause respiratory infections, which can prove deadly to people with AIDS.

Jim appreciates Green+Cross for another reason: He had been on harder stuff under doctors' orders. He is using Green+Cross marijuana in a tea form and credits it with getting him out of a wheelchair and onto crutches. He says the pot tea is preferable to pharmaceuticals prescribed through the Veterans' Administration. "They saved my life, but they're too free-handed with hard drugs," Jim says of his V.A. doctors. "I wanted off morphine and codeine."

WITH 70 MEMBERS, GREEN+CROSS may be unique for Washington state, but it is just one of many above-ground marijuana "buyers' clubs" in the United States. Club members suffer from various diseases, with AIDS, cancer, arthritis, and glaucoma the most common. Many also suffer from the side effects of AIDS treatment and cancer chemotherapy. They seek marijuana to relieve pain, control muscle spasms and seizures, overcome nausea, stimulate appetite, and (in the case of glaucoma) relieve intraocular pressure that can lead to blindness. With the exception of eight people who receive marijuana under the federal government's "compassionate use" program, which has been closed to new patients since 1992, the drug is not legally available as a medicine.

In 1988 the Drug Enforcement Administration's chief administrative law judge, Francis Young, concluded that the federal government should reclassify marijuana so doctors could prescribe it, but he was overruled by DEA Administrator John C. Lawn. Many political bodies and health organizations, including 35 state legislatures, the American Public Health Association, the American Bar Association, and the California Medical Association, also say the ban on medical marijuana should be lifted. In November U.S. Rep. Barney Frank (D-Mass.) introduced H.R. 2618, which would allow doctors to prescribe marijuana for a variety of conditions. But the buyers' clubs are not waiting for a change in policy.

With some 6,000 registered members, the San Francisco–based Cannabis Buyers Club is the largest and most conspicuous of the clubs. Born in the city's gay Castro District, the club works with the tacit approval of City Hall. As John Entwistle, the club's volunteer coordinator, notes, the city's policy of looking the other way prevents otherwise law-abiding citizens from supporting the street trade in marijuana. Non-enforcement also saves the San Francisco Police Department the bad publicity of arresting and jailing people with terminal conditions, many of them members of the city's politically powerful gay community.

The club recently moved from a small storefront to a 29,000-square-foot commercial space on Market Street, just a few blocks away from City Hall and the state and federal buildings. Club director Dennis Peron says rent for the multi-level space is nominal, thanks to a club sympathizer whose wife died of cancer. At the street-level entrance a group of bouncers screens club members, would-be members, and visitors. A flight of steps brings you to the club's offices; another flight up is the membership desk, where photo IDs and letters of diagnosis are inspected before membership is granted.

Hazel Rodgers, a 76-year-old volunteer working the desk, says it's rare that people con their way into the club. Indeed, buying marijuana around the corner in the Civic Center is much easier and can be done any time of the day or night. Jeffrey Reed, an HIV-positive registered nurse who moved from Fort Worth to San Francisco to work at the club, says intuition and knowledge of the AIDS culture play a big part in screening out healthy people with bogus medical claims. "You can tell," he says. "People who have HIV, we have a vernacular other people don't." Entwistle says the club provides comfort and sanctuary for AIDS patients who are approaching the end. "Doctors don't know what to do with them," he says. "If they die, they die happy."

Although the club gets most of its referrals through the gay community, not all of its members have AIDS. Peron, who started the club after he was arrested for providing his ailing lover with marijuana, believes that practically any painful medical condition can be treated with marijuana. This broad approach may leave the club open to criticism. Along with letters of diagnosis from physicians at respected medical centers such as Berkeley's Alta Bates Hospital and the University of California at San Francisco, a file that Peron showed me included more than a few letters from chiropractors attesting to painful conditions that are difficult or impossible to verify objectively.

A SKEPTIC MAY ALSO BE TROUBLED BY the almost festive atmosphere at the Cannabis Buyers Club. Beyond the registration desk is a paraphernalia counter and, most stunning of all the club's features, a third floor not unlike an Amsterdam marijuana bar. There club members smoke pot and socialize. A counter serving the lunch-time crowd also sells marijuana in leaf form, in baked goods, and in salves. Behind the counter a price board lists the available marijuana along with prices, the best being a AAA-rated "California green" variety priced the day I visited at $75 per one-eighth ounce. A Mexican variety costing $20 an eighth was also available. Peron says the club sells roughly 10 pounds of marijuana, which he purchases, inspects, and grades, a week.

The flagrant nature of the club's activities makes some members of the medical marijuana movement uneasy. Even Green+Cross's Miller says he doesn't want his operation to be tagged as a "party room" because the Cannabis Buyers Club has advised it. The San Francisco club had a close call last April, when the DEA and the FBI put it under surveillance and went to the city police department for help. The SFPD declined to get involved, and word about the surveillance got out, which gave Peron the chance to organize a demonstration in front of the city's federal building. The investigation was ultimately called off.

While Peron's in-your-face style may raise eyebrows, he deserves respect for his

organizational and political skills. The club also serves as headquarters for Californians for Compassionate Use, which is trying to get a medical marijuana initiative on the 1996 ballot. The most important provision of the initiative would simply recognize what's already going on between many patients and doctors: "No physician in the State of California shall be punished, or denied any right or privilege, for recommending marijuana to a patient for treatment of nausea, appetite loss, chronic pain, spasticity, glaucoma, arthritis, migraine, or other intractable illnesses for which marijuana provides relief, providing that such medicinal use of marijuana would, in such physician's professional medical judgment, be of benefit to his or her patient."

THERE'S REASON TO BELIEVE THAT THE 600,000 signatures needed to get the initiative on the ballot will be gathered if people line up to what they've been telling pollsters. Americans are generally sympathetic to patients seeking medical marijuana. (In fact, many are surprised to learn it is not legally available.) A November 1995 poll commissioned by the American Civil Liberties Union found that 79 percent of Americans think letting physicians prescribe marijuana is a "good idea." Eighty-five percent of respondents said they would favor making marijuana legally available for medical uses where it has proven effective.

In California, where Gov. Pete Wilson has twice vetoed medical marijuana bills, a March 1995 poll by David Binder Research found that 66 percent of registered voters support legalizing marijuana for medicinal purposes (compared to 22 percent who favored legalization of all marijuana use by adults). Support in some parts of the state is even stronger. In San Francisco in 1991, about 80 percent of voters approved a referendum urging the legalization of medical marijuana. In 1992, 77 percent of Santa Cruz County voters favored pot by prescription. The state legislature has repeatedly expressed support for the idea by large margins, as have county and city boards of supervisors around the state. Major California newspapers, including the *San Francisco Chronicle*, the *Oakland Tribune*, and the *Orange County Register*, have editorialized in favor of marijuana use for medical purposes.

The medical marijuana movement continues to attract support from conservatives as well as liberals and libertarians. Journalists such as William F. Buckley Jr. and Richard Brookhiser have long argued that patients should have access to pot, and on the campaign trail conservatives are coming to share that view. During a July meeting with the editorial board of *The Charlotte Observer*, Republican presidential candidate Patrick Buchanan said the use of marijuana as a medicine should be a matter between patient and physician. "If a doctor indicated to his patient that this was the only way to alleviate certain painful symptoms," Buchanan told the *Observer*, "I would defer to the doctor's judgment."

The question that elicited this response was submitted by Rick Doblin, a Charlotte resident who heads the Multidisciplinary Association for Psychedelic Studies, which supports pot by prescription. Buchanan's answer "was eminently reasonable," Doblin says. "We've done a lot of lobbying of sympathetic Republicans, but they were afraid to take a public position. When Buchanan said that, it was refreshing."

One person in particular found Buchanan's statement more than refreshing and would later ask the candidate to confirm it. George McMahon of Bode, Iowa, suffers from Nail Patella Syndrome, a painful and terminal neurological and bone disorder. He is one of eight Americans who may legally smoke marijuana, provided by the National Institute on Drug Abuse. McMahon smokes the marijuana to ease the pain caused by his condition and by the numerous operations he has undergone. He has another reason to want marijuana rescheduled so that it can prescribed: His 24-year-old daughter also has Nail Patella Syndrome.

At an October campaign stop in Bode, McMahon asked Buchanan what he thought about pot by prescription. According to the *Storm Lake Pilot Tribune*, Buchanan reversed himself, saying doctors should not prescribe pot because it's a worse drug than alcohol. But when McMahon told Buchanan about his condition, the candidate said, "If everything you say is true, and I choose to believe you, I would support you in a second." What wasn't reported by the local newspaper was McMahon's meeting with Buchanan after the campaign stop officially ended. "I went and talked to him later, and he said he couldn't understand why the DEA was controlling my medicine," McMahon says. "He seemed very sincere to me."

LESS PROMINENT CONSERVATIVES ALSO support medical marijuana. A conservative Christian from Poulsbo, Washington, began using marijuana years ago, at the recommendation of his oncologist, while undergoing treatment for testicular cancer. The man, who asked me not to use his name, described himself as a supporter of his area's Republican state representative, also a conservative Christian, and a backer of a statewide anti–gay rights initiative. "I think I have an opportunity as a conservative and a Christian to bring some credibility to the [medical marijuana] issue and bridge a gap," he says.

Although medical marijuana may seem a natural issue for the left, the conditions that can be treated with pot affect people across the political spectrum. Personal experiences with the medical benefits of marijuana have a powerful impact not only on patients but on their relatives, friends, and acquaintances. Their testimony makes medical marijuana a humanitarian issue that transcends partisan differences. Supporters of Barney Frank's medical marijuana bill note that it reads a lot like a 1981 bill co-sponsored by a second-term congressman from Georgia named Newt Gingrich. ®

Seattle resident Jim Christie's work on environmental and property rights issues has appeared in The American Enterprise, Chronicles, *and* Human Events.

Getting Wetter?

By Stanton Peele

There are signs of a healthy shift away from hostility toward alcohol in the United States.

A TRADITIONAL ANECDOTE TELLS OF a congressman who answered a constituent's inquiry about his position on whiskey: "If you mean the demon drink that poisons the mind, pollutes the body, desecrates family life and inflames sinners, then I'm against it. But if you mean the elixir of Christmas cheer, the shield against winter chill,...then I'm for it. This is my position and I will not compromise!"

Unlike this apocryphal congressman, Americans and their government have staked out strong positions on alcohol. But these positions have fluctuated wildly from era to era.

There are signs that, after several decades of anti-alcohol crusading, the United States is swinging back toward a more positive attitude. The most conspicuous indicator of this shift was the federal government's acknowledgment in its 1995 dietary guidelines that alcohol has beneficial effects. Long overdue, this recognition marks a significant change from previous government decrees on the subject. Other signs of a thawing in attitudes toward alcohol are still preliminary: Several small pilot programs in the United States are challenging the dominant approach to alcohol problems, which offers abstinence as the only cure for the "disease" of alcoholism. And leading researchers, noting that the risks of fetal alcohol syndrome have been greatly exaggerated, are questioning conventional advice about drinking during pregnancy.

These positive signs should be regarded with caution. America's ambivalence about "demon rum" is deeply imbedded in our culture. For two centuries, we have fought about the role alcohol should play in our lives. Just as we turn in one direction, forces are set in motion that pull us back the opposite way.

The colonial era was the golden age of American drinking. Americans consumed three to four times as much alcohol (mostly beer and cider) as they do today, with few social problems. Legislators drank while in session; communion wine was part of Protestant services; the tavern was a family-oriented gathering place; and tavern keepers were highly respected members of the community. There was no anti-alcohol movement in pre-revolutionary America. There *were* drunkards, but responsibility for excessive drinking was laid at their feet and not blamed on alcohol. The distinguished Puritan cleric Increase Mather warned against drinking too much but in the same breath referred to alcohol as "God's Good Creature."

Drinking became less benign following expansion of the United States after the War of Independence. Industrialization and the institution of regular work hours made heavy drinking less compatible with daily obligations. At the same time, the social forces that kept drinking under control in colonial America began to wane. In the fabled saloons and dance halls of the West, unlike in the family tavern, the only women present were prostitutes; drunken unruliness, fist fights, and gunplay were commonplace.

The temperance movement arose in the 19th century in response to growing problems related to drinking. Despite its name, the movement rejected the idea of moderation, maintaining that *any* drinking inevitably progressed to excess and ruin. Several states enacted—and repealed—alcohol prohibition. At the national level, the war between the "drys" and the "wets" translated into regional and group conflict—the South and Midwest versus the West and urban East, Protestants versus Catholics, native-born Americans versus new European immigrants.

WHEN THE NATION EMBARKED ON "the Noble Experiment" of Prohibition in 1920, reactions were mixed, but there was little organized opposition to the 18th Amendment. Thirteen years later, wets and drys alike had become so disenchanted with Prohibition that few opposed repeal. The temperance promise that sin and poverty would be eliminated along with booze was simply not borne out, and the attempt to suppress alcohol consumption had brought a host of unintended costs. In the aftermath of Prohibition, drinking became acceptable once again.

But the feelings that gave rise to Prohibition remained just beneath the surface of the American psyche, and in the 1970s a new temperance movement emerged, manifested in the rapid growth of the recovery movement and Alcoholics Anonymous, of private alcoholism treatment à la the Betty Ford Center, and of government efforts to limit alcohol consumption. The United States quadrupled its hospital beds for alcoholics between 1978 and 1984, placed warning labels for pregnant women on alcoholic beverages, and made anti-alcohol education programs a staple not only for high school students but for children as young as six. Banners proclaiming that "alcohol is a liquid drug" appeared in schools nationwide, while "Just Say No" became a national slogan.

But the seeds of an opposing trend were being sown just as the new anti-alcohol movement flowered. Medical epidemiologists tracking health outcomes in large groups of people repeatedly found that abstainers suffered more heart disease than moderate and light drinkers. Since heart disease is by far America's leading cause of death, moderate drinkers had lower overall mortality rates (although mortality rates among excessive drinkers

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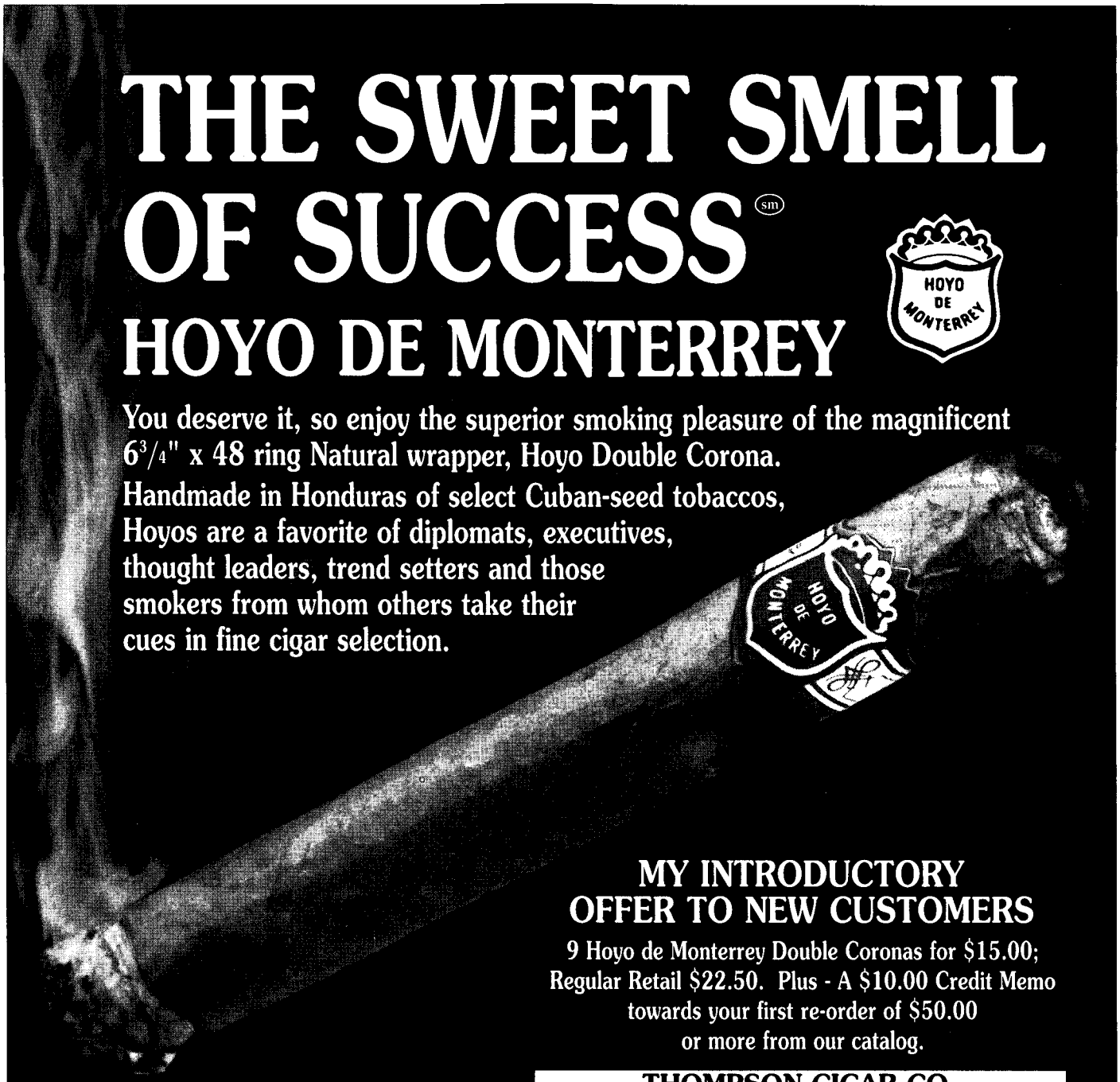

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were higher than average). Such findings, which began appearing in medical journals by the 1980s, presented public health officials with a dilemma: How was it possible to tell children drinking was bad but that people who drank lived longer?

Despite much evidence to the contrary, in 1990 the dietary guidelines compiled by the U.S. Department of Health and Human Services in conjunction with the Department of Agriculture asserted that "drinking has no net health benefit." But the government faced increasing difficulty sustaining its blanket condemnation of alcohol, and the latest dietary guidelines, issued in January, announced that drinking could be beneficial. The report even went so far as to note that "alcoholic beverages have been used to enhance the enjoyment of meals by many societies throughout human history." The change occurred in part because additional scientific evidence appeared after the 1990 report. But the real obstacle had been cultural resistance. According to Assistant Secretary of Health Philip Lee, "There was a significant bias in the past against drinking." Marion Nestle, a guidelines committee member and chair of New York University's nutrition and food science department, said the change represented "a triumph of science and reason over politics."

STILL, THE REVISION DOES NOT REPRESENT a flip to Mediterranean-style attitudes. For one thing, the recommended daily consumption limits—one drink for women and two for men—are quite low. In Britain (hardly a Mediterranean culture), the government's "sensible drinking" limits are about twice the American levels: two to three drinks daily for women and three to four for men. Furthermore, the U.S. guidelines emphasize that children should not consume alcohol. This is far from a universal belief. In Spain, children of any age may drink beer or wine with a parent at a cafe. This is also true in New Zealand, provided a meal is being eaten. In Switzerland, children may drink on their own at 16, and in some cantons at 14. No industrial nation other than the United States restricts drinking to people 21 and older.

Forbidding drinking by children does not seem to reduce alcohol abuse. Psychiatrist George Vaillant, who tracked a group of Boston adolescents for four decades, found that Irish-Americans were seven times as likely to become alcoholic as were Italians, Greeks, and Jews. Yet the latter groups typically introduce children to alcohol, while in Irish culture children traditionally do not drink in the home.

The government has faced increasing difficulty sustaining its blanket condemnation of alcohol, and the latest dietary guidelines announced that drinking could be beneficial. The change occurred in part because of additional scientific evidence. But the real obstacle has been cultural resistance.

Despite a legal drinking age of 21, youthful overdrinking is a common feature of American life. In national surveys, about half of male high school seniors and college students say they have consumed at least five drinks at a sitting in the previous two weeks. More than a third of female students say they've had four or more drinks at a time. The figure for sorority and fraternity members is 80 percent or higher. It stands to reason that teenagers who learn to drink with friends are less likely to acquire responsible habits than teenagers who learn to drink at home in a family setting.

Among other anomalous features of Irish drinking, Vaillant's Boston study found that there were more abstainers in this group as well as more alcoholics. One reason for this dichotomy was that many excessive drinkers had sworn off drinking altogether. The Italians, on the other hand, were more likely to react to a drinking problem by cutting down.

This cultural difference reflects a larger battle in American alcoholism treatment. For many years, behavioral psychologists have claimed considerable success in teaching problem drinkers to reduce their intake. A.A. members and others who subscribe to the medical model of alcoholism, including the staffs of innumerable private treatment centers, insisted that this was impossible. But in 1992, the World Health Organization announced the results of an international study of "brief interventions" in both developed and Third World countries. Brief interventions are carried out in a general health care setting, rather than at alcohol treatment centers. A physician or other health care worker inquires about a patient's level of drinking, then informs heavy drinkers about healthy levels of drinking. In subsequent visits, the doctor asks about the patient's progress in reducing his or her drinking. The WHO study found that brief interventions are substantially more effective than standard alcoholism treatment of the kind practiced in the United States. They reach more drinkers with less folderol, and they avoid the conflicts associated with reformers-cum-therapists accusing heavy drinkers of being alcoholics in denial.

Despite these promising results and some success at offering controlled drinking as an alternative in pilot programs at several American universities, the U.S. alcoholism treatment industry is not likely to wither away any time soon. For the foreseeable future, recovering alcoholics and expensive private hospitals will continue to hold sway over how Americans deal with problem drinkers.

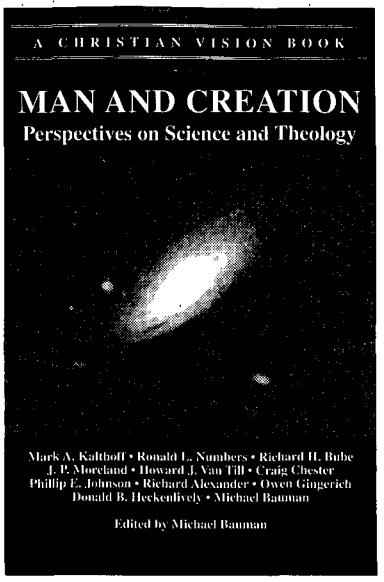
ANOTHER MANIFESTATION OF TEMPERance-movement thinking is the advice given to women about drinking during pregnancy. Predictably, the 1995 U.S. dietary guidelines confirm the instruction that appears on every bottle of beer, wine, and liquor: "According to the Surgeon

General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects."

Americans started hearing about the dangers of fetal alcohol syndrome (FAS) beginning in the 1980s. But subsequent investigations have revealed that FAS is exceedingly rare, even among alcoholic women. In 1995, Ernest Abel, a pioneering FAS researcher at Wright State University, performed a meta-analysis of 59 studies in various countries that looked at the relationship between maternal drinking and birth weight. Not only was there no evidence that light drinking harmed the fetus, but mothers who consumed up to one drink per day actually had heavier babies than mothers who abstained. (However, pregnant women who average two drinks a day tend to have lighter babies.) Those findings led Abel to question the wisdom of public health efforts to discourage all women from drinking during pregnancy. Once again, the evidence does not support an official U.S. health proclamation about alcohol.

American attitudes toward alcohol are aberrant even when compared to those of cultures, such as Britain and Scandinavia, that share elements of the temperance tradition. Consider: Among the NATO soldiers in Bosnia, only the Americans are forbidden to drink. According to *The New York Times*, "the Norwegian soldiers here can drink in moderation, as can the French, the Danes, and the British." Apparently, other nations accept the logic that adults who are allowed to fly large aircraft and fire heavy artillery can also be trusted to consume alcohol moderately. We do not. But then, the Danes, French, British, and Norwegians have never enacted national prohibition. ®

Stanton Peele, a psychologist specializing in drug use and addiction, is co-author (with Archie Brodsky and Mary Arnold) of The Truth About Addiction and Recovery *(Fireside). He has received the Mark Keller Award from the Rutgers Center for Alcohol Studies and the Lindesmith Award for Achievement in Scholarship from the Drug Policy Foundation.*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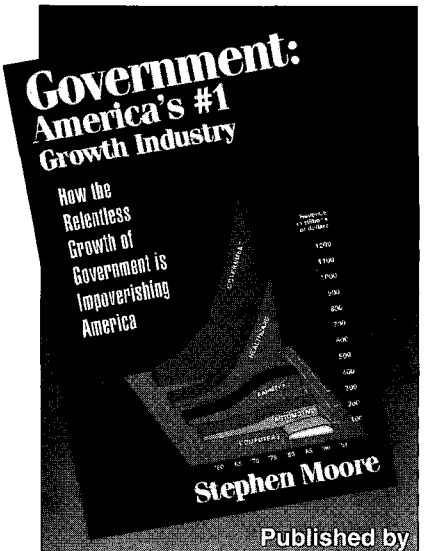

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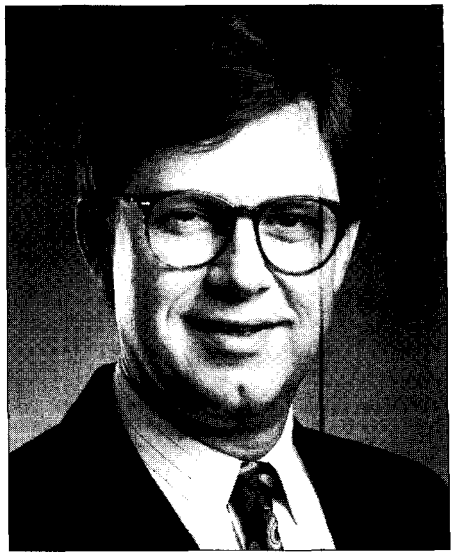
America by the Books

By Rick Henderson

The Almanac of American Politics 1996, by Michael Barone and Grant Ujifusa, Washington: National Journal Inc., 1,550 pages, $64.95/49.95 paper

Politics in America 1996, edited by Philip D. Duncan and Christine C. Lawrence, Washington: Congressional Quarterly Inc., 1,546 pages, $54.95 paper



Michael Barone: The *U.S. News & World Report* writer combines historical knowledge and lucid writing to produce a winning political encyclopedia.

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IN LATE JANUARY OF LAST YEAR, I TELEphoned Michael Barone, the *U.S. News and World Report* senior writer and principal author of *The Almanac of American Politics*, at his Washington office. "I'm in the third district of Arizona," he said, racing to update his almanac after the 1994 elections.

The deadline for the new edition was no more than a few weeks away, and I thought he was working his way across America alphabetically. "Good lord," I said, "how will you ever finish on time?"

Don't worry, Barone told me. He said he randomly selects the order in which he writes about congressional districts. "If I didn't mix them up, this would drive me crazy."

Barone has been at this for a quarter-century now. Every two years since 1971, Barone and his Harvard College buddy Grant Ujifusa, now a senior editor at *Reader's Digest*, have offered a panoramic view of the nation and its elected officials. With a few research assistants and editors, after each congressional election the two put together a 250,000-word volume that political reporters and Washington players find indispensable. Over time, Barone has taken over more of the *Almanac*'s writing, to the extent that print and television ads for the *Almanac* portray Barone as the sole author.

But there's a newer kid on the block. Since 1982, *Congressional Quarterly*'s *Politics in America* has provided another source for political junkies checking up on the nation's elected officials. Compiled by a staff of more than three dozen Capitol Hill reporters and editors, *Politics in America* also gives a detailed description of each congressional district and of the representatives and senators voters send to Washington.

Both volumes are loaded with voting records, positions on issues, even the geographic and demographic attributes of the 435 congressional districts. They include biographical information on governors and members of Congress, vote tallies in recent primary and general elections, district and Washington office addresses and telephone numbers, and ratings of the members from different interest groups. And the two encyclopedias have attracted their fans, especially among the journalists who use them, as the dueling blurbs on the backs of the books indicate: David Brinkley, David Broder, and Al Hunt plug *Politics In America*; George Will, Bryant Gumbel, and Jim Lehrer put in their two cents for *The Almanac of American Politics*.

But these aren't identical, or even interchangeable, publications. So unless you're a lobbyist, a journalist, a researcher, or a political junkie, should you care? It's part of my job to try to keep up with the personalities on Capitol Hill. Political encyclopedias like this are as essential for me as a Rolodex. But could you, faithful REASON reader, get 50 or 60 bucks' value from one of these hefty tomes?

ACTUALLY, YES—ESPECIALLY IF YOU INvest in *The Almanac of American Politics*. *Politics in America* promises to do nothing more than present a ton of data about Congress and the people who inhabit it. The *Almanac*, by contrast, comments on the nation's political zeitgeist and how the executive and legislative branches in Washington interact with governors and state legislatures. And while Barone's at it, he offers some pretty lively commentary.

Compare the opening essays in each book. *Politics in America* starts with a few hundred words congratulating itself for recognizing, in its first edition (1982), a thirtysomething history professor from Georgia "who wanted to see guerilla theater on the floor" of the House. "Today, eight Congresses later," says the introduction, "Newt Gingrich's fantastic political voyage has remade the face of American government." But will Bob Dole and the slow-moving Senate go along with the firebrands in the House? There's nothing here you couldn't find in any garden-variety newspaper editorial.

Barone instead offers a 23-page introduction with the daunting title, "The Restoration of the Constitutional Order and the Return to Tocquevillian America." Barone, who along with everything else is a pretty fair historian (check out his 1990 book *Our Country: The Shaping of America from Roosevelt to Reagan*), explains that the 1994 election was neither a tem-

per tantrum by angry voters, nor "did [it] entirely transform either the political opinion or civil society" toward sympathy for limited government. Instead the election "provided an occasion and a setting in which opinions which had long been held could be expressed and a society that had been for some time reshaping itself could reveal its new form."

Barone argues that the nation seems "to be returning to a Tocquevillian America, to something resembling the country that the French aristocrat Alexis de Tocqueville visited in 1831 and described in his *Democracy in America*. Tocqueville's America was egalitarian [believing in the moral equality of every citizen], individualistic, decentralized, religious, property-loving, lightly governed."

He's not saying, as *National Journal* reporter Paul Starobin suggested in a December *Los Angeles Times* column, that Americans long for a revival of slavery, outdoor toilets, whale-bone corsets, and commerce by barge. Rather, Barone believes that the country is rejecting the high taxes, heavy regulations, and stifling bureaucracies that started to take hold in Washington during the New Deal and have driven the three branches of the federal government since the days of Franklin Roosevelt.

In Barone's view, average Americans no longer want the government to redistribute jobs and income or concentrate on eliminating the business cycle. Instead, he writes, "The first thing voters seek of government is order—not some arbitrary, authoritarian order, but a rational, predictable order in which ordinary people can raise their families, make their livings, participate in their communities and go about their daily lives without fear of physical violence or economic disaster."

If Barone is correct in his assessment, we're entering an age in which politics will become much less important in the lives of average Americans. The public may be doing more than rejecting the New Deal: It may be repudiating central planning and the micromanagement of American life first championed by the Progressives in the early decades of this century. Political elites across the country might need to update their résumés.

The *Almanac* offers more information than its counterpart—profiles of Bill Clinton, Al Gore, the likely Republican contenders as of April 1995 (Pete Wilson is included while Steve Forbes isn't), and every governor. Barone discusses how each state has voted in recent presidential elections and what those voting habits say about the people who live there. *Politics in America*, however, never ventures so far from its Capitol Hill orientation and its matter-of-fact approach.

Barone also adds an extra touch that makes the *Almanac* a more useful publication for observers of the 104th Congress than its rival publication. The House Republicans' Contract With America completely consumed the first three months of the 104th Congress and dominated Washington politics for much of 1995; its decentralist message also fit well with the Tocquevillian America Barone sees emerging. In each House member's profile, the Almanac includes the vote tallies of 15 key legislative components in the contract. By contrast, *Politics in America* lists only one vote taken in 1995—on the Balanced Budget Amendment to the Constitution.

Barone isn't saying, as *National Journal* reporter Paul Starobin suggested in a *Los Angeles Times* column, that Americans long for a revival of slavery, outdoor toilets, whale-bone corsets, and commerce by barge.

EVEN THE APPROACHES THE BOOKS USE TO profile senators and representatives differ greatly in style and substance. Both books include a geographical and political summary of each district and personal profiles of the elected officials and their recent challengers. In *The Almanac of American Politics*, this information is combined into a single essay for each district. *Politics in America* instead divides its data into compartments: A profile of the district; for first-termers, a discussion of their "path to Washington"; and for incumbents, separate sections on the politicians' actions "in Washington" and "at home." Divvying up each congressional district in this manner only enhances the rather bland, "just-the-facts-ma'am" rap *Politics in America* uses in describing the people who inhabit Congress.

Let's do a more direct comparison. At random I opened *Politics in America* and landed in the fourth district of Iowa, where freshman Republican Greg Ganske unseated 36-year veteran Neal Smith in 1994. The book says Ganske "has made spending reduction one of his top priorities, favoring a cost-benefit review of all government programs. One of his first targets is pork barrel projects.

"To emphasize his point, Ganske once wrestled a greased pig during a campaign appearance at a local rodeo. Ganske also plans to push for a crime bill that focuses on apprehension and punishment instead of 'social welfare' programs aimed at crime prevention." Nice bit of color, but otherwise fairly pedestrian prose.

By contrast, Barone offers more perspective and more detail, letting us know that Ganske's district includes the site of Robert James Waller's *The Bridges of Madison County*. Voter loyalties in this agricultural district are divided between liberal Des Moines, where corn and hog farmers "hanker...for generous farm subsidies," and the beef-cattle farmers of Council Bluffs, where the residents rely less on subsidies and "the federal government is seen as an officious intermeddler. ...Des Moines has more votes...but in 1994 the balance of opinion was tilted more to the Council Bluffs side." With Barone's engaging style, you might actually pick up the *Almanac* if you aren't doing research.

If the *Almanac* has a flaw, it's in Barone's relentless fairness to everyone in

Congress, even those whom in private he may regard as charlatans or scum. The book is, after all, supposed to be a reference work rather than a broadside. When Barone writes his memoirs, we may learn what he really thinks about some of these characters.

For hard-core political junkies and dedicated propeller-heads, *Politics in America* does offer something the *Almanac* doesn't: the contents of the book on CD-ROM. If I were a full-time Capitol Hill reporter, or the producer of a Washington-based public-affairs radio or television program, the ability to get information on any congressional district by hitting a few keystrokes on my computer would be valuable indeed. More casual political observers, however, might consider a political encyclopedia's contents more important than its format.

Picking up *The Almanac of American Politics 1996* is almost as satisfying as visiting a winery or microbrewery: Every sample of a different beverage offers a pleasant surprise—and with the *Almanac* you can drive safely after your stay. Reading *Politics in America*, by contrast, is more like taking a dose of vitamins: It's useful, even nourishing, not unpleasant, but not exactly fun. Now if *National Journal* would only spring for a CD-ROM version of the *Almanac* after this year's elections, you'd have no reason to choose any other political encyclopedia. ®

Rick Henderson (DCReason@aol.com) is Washington editor of REASON.

It Takes a Bureaucracy

By Gwen J. Broude

It Takes a Village: And Other Lessons Children Teach Us, by Hillary Rodham Clinton, New York: Simon & Schuster, 318 pages, $20.00

HILLARY CLINTON HAS WRITTEN A book about children. Her agenda will surprise no one. She wants to promote the idea that government has a legitimate, conspicuous, and indeed necessary role to play in the lives of American children and their parents. In making her case for government intervention, however, Clinton adopts a clever strategy, ostensibly grounding her policy proposals in what experts on child rearing have to tell us about children's needs. This creates the impression that the policies she supports—including medical- and family-leave mandates, licensing of home-based day care, state-sponsored pregnancy and infant care programs, and training for parents with poor literacy skills to help raise children "born to read"—are based on empirical evidence and, even better, science. In keeping with this game plan, Clinton provides a running narrative of child development. Thus, while *It Takes a Village* is a political book, it is also a book that claims to be about developmental psychology. I want to focus here on the developmental story that Clinton tells and ask how faithfully the premises about children's development on which the book depends reflect what developmentalists actually have to tell us.

NOT ONLY DO I RESENT BEING PORTRAYED AS BOSSY AND OVERBEARING, I ALSO DON'T MUCH CARE FOR THE WAY YOU'RE RAISING YOUR CHILDREN.
IT TAKES A VILLAGE
BY HILLARY RODHAM CLINTON
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CHIP BOK

On Clinton's reading of developmental psychology, the first three or so years of life are "not just important; they are more crucial to shaping children than any other time." Further, young children are influenced for good or bad by virtually anything that happens in their presence. "From the way that we touch them and our tone of voice when we bathe or change them," she writes, "they sense whether we enjoy their company, whether we are paying attention or just going through the motions, whether we are listening."

Stress in parents "may create feelings of helplessness that lead to later developmental problems." Children need "gentle, intimate, consistent contact" from caretakers, and structured, ritualized, but also "unhurried" time. The early years are crucial to later development in part because it is then that the brain is most receptive to input, or "food," from the environment. "Brain research teaches us that feeling safe and protected is essential to healthy neurological development," Clinton claims. After that, "brain cells and synapses begin to wither away, so that the child learns more slowly."

"Children who are subjected to constant comparisons," writes Clinton, "may lose heart in their pursuit of a developmental task or abandon it altogether." Youngsters learn what they see and hear. Children also come equipped with certain predispositions. They ask all kinds of questions about God; for instance, what does God look like, why does God let people do bad things, and does God care whether we squash a bug. From this we can conclude that "the potential for spirituality seems to be there from the beginning." A baby will cry in the presence of another crying infant. From this we can infer that newborns have "empathy" for the suf-

fering of others from the start. Mostly, however, who a child becomes is a product of what "the village" offers. The child that emerges from Clinton's reading of the developmental literature is vulnerable, even fragile, especially sensitive to early impressions. And impressions matter because this is a child who is mainly a product of its environment.

Is this the profile of childhood that emerges from developmental experts? *It Takes a Village* accurately points to the kinds of child-rearing environments recommended by developmentalists as most likely to produce a thriving child and a competent, self-sufficient, confident, productive adult. It is better to have two parents, one of each sex. It is better to set limits but also high expectations, to emphasize rationality, and to take the child's opinions into account. Consistency is better than inconsistency. And so on. But although the profile of better and worse child-rearing strategies portrayed in *It Takes a Village* remains loyal enough to what developmentalists tell us, the profile of the child does not.

When I was in college in the 1960s, I learned the Margaret Mead version of human development. On this view, human nature is infinitely malleable, and culture determines how any child will turn out. This sounds a lot like Clinton's account of children, and so it is unsurprising that Mead and her contemporaries make scattered appearances throughout the book. By the time I began to teach developmental psychology in the 1970s, however, a new model of development was emerging, and this is the model that characterizes developmental psychology today. On this view, children are resilient, able to withstand even large variations in their treatment while still remaining on track. Developmental outcomes are understood to be significantly influenced by the inborn traits of children themselves. The idea that a person's developmental fate is sealed by three or four years of age has given way to the notion of ongoing plasticity. Brains continue to adapt to environmental input throughout life, and so, therefore, do the psychological processes that brains underwrite.

WHAT IS MORE, NEWBORN HUMAN BAbies are not operating with a full deck of cards, neurophysiologically speaking. The cortex, which is required for anything interesting in the way of cognitive activity, does not begin to kick in until a baby is perhaps two months old, and then only bit by bit. So babies are dumber than the book implies, and also, therefore, more impervious to environmental happenstance. And without the benefit of cortical input, babies are not making cognitive evaluations of the people or world around them. The current

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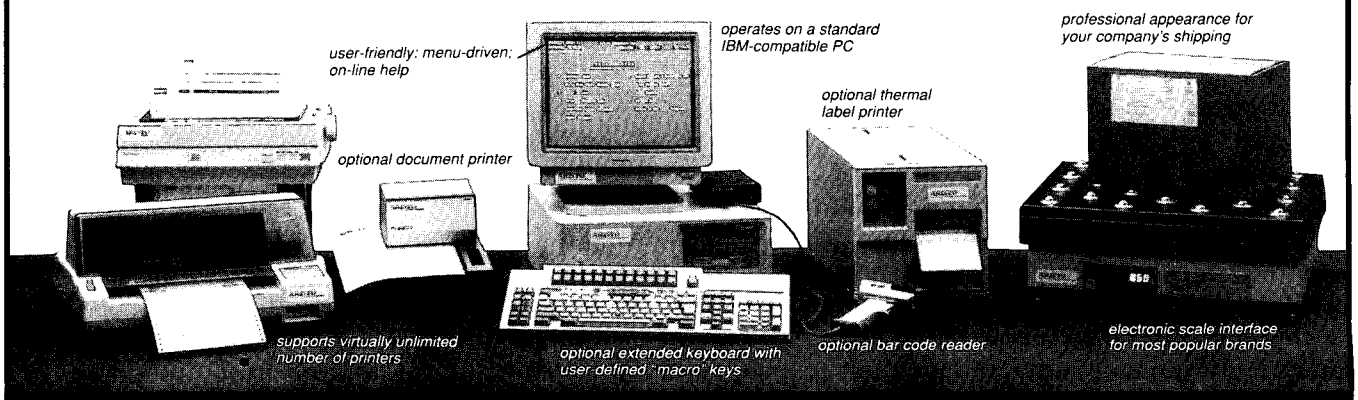
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profile from academic psychology portrays children who are dramatically less delicate and pliant, and less sensitive to the actions of others, than is claimed in *It Takes a Village*. We now think of children as more resilient, more adaptable, more responsible for their own developmental fates. Environments do matter, a lot, but Clinton's porcelain child is out of date.

I have focused on Hillary Clinton's interpretation of what developmentalists have to tell us about children. But *It Takes a Village* is really two different books about what children are like. Threaded throughout the book are personal anecdotes about the childhood and parenting experiences of Clinton, her husband, and those near and dear to them. From these vignettes, we get a version of the nature of children that is dramatically different from the official account presented in the book and essentially the same as the version that contemporary developmentalists portray. Indeed, it is from these vignettes that we learn the real lessons from children to which the subtitle refers.

In one vignette, Hillary the child has moved to a new neighborhood. Intimidated by the teasing of the neighborhood kids, she runs home every day. Finally, her mother takes her by the shoulders, tells her that no cowards live here, and sends her back outside. When the neighborhood kids, surprised at seeing her back so soon, challenge her again, Hillary "stood up for myself and finally won some friends."

In another vignette, Chelsea is not allowed to have velcro closures on her shoes until she learns to tie her laces. When Chelsea finally gets that lace tied, Hillary observes, "It may sound silly now, but I loved the look of accomplishment on her face when she showed us all what she could do for herself."

These are small stories. But they demonstrate that children do not break when faced with challenges. Indeed, they flourish. Clinton's account of her mother's early life is a far more dramatic example of the kinds of challenges that children can face and overcome. Clinton remarks, "to a great extent, my mother's character took shape in response to the hardships she experienced in her early years." These character traits included a respect for people of all sorts, a passion for learning, and a belief in social justice.

Why this disconnect between Clinton's account of the developmental literature and what her own life should be telling her about the nature of children? Clinton tells us that *It Takes a Village* is not a memoir. But the book is deeply revealing about what drives Hillary Clinton as policy advocate. Her official version of child development is also a description of how she views human nature. *It Takes a Village* opens with the claim that children are not rugged individualists. The message with which the book wishes to leave us is that parents are not rugged individualists either. In a cameo appearance, one full-time mother is quoted as follows: "This is real, America. We ask you, the government, and you the employer, to help us, the working people, to make [child rearing] work. We can't do it alone." It is in the nature of the human being that the fragile, dependent child becomes the vulnerable, dependent adult. According to Clinton, then, the experts tell us that children need the village to develop decently, and so do their parents.

The current profile from academic psychology portrays children who are dramatically less delicate and pliant than is claimed in *It Takes a Village*. Environments do matter but Clinton's porcelain child is out of date.

ODDLY, HOWEVER, IN THE WORLD OF Hillary Clinton some parents are more susceptible to the influence of human nature than others. Thus, again through personal vignettes, we get a sense of how strong, self-sufficient, and resourceful parents can be. In one such story, Clinton's father, as a boy, badly injures his legs and feet. The doctors want to amputate, but his mother won't let them near her son. She calls her brother-in-law, a country doctor, and orders him to "save my sonny's legs." He does.

In a more mundane example, Chelsea is ill, Clinton is due in court, and no one is around to look after a sick child. Hillary the mother frantically attempts to find someone to fill in as babysitter. Finally, a friend agrees to watch Chelsea.

So some adults are capable of fending for themselves and their families, and of recruiting the help of the village when that is required. These must be parents who have escaped the inevitable developmental march from dependent child to dependent adult. But other parents, somehow, have not. These are the parents who need the help of a special kind of village—the government. It's too bad that Clinton wants to deprive these parents and their children of reaping the advantages of facing and overcoming challenges on their own that she and her family have enjoyed.

Let me say a final word about the "village." The title of this book is taken from an African proverb. The kinds of villages to which the proverb refers are small, homogeneous, and kin-based. They are little platoons. People know each other, interact with each other on a day-to-day basis, and form voluntary associations in which I watch your child and you watch mine. By contrast, although *It Takes a Village* does portray people helping one another without government interference or coercion, the village that Hillary Clinton has in mind is Uncle Sam. So we have another disconnect, this time between what children and parents need and what the book proposes in the way of policy initiatives. Child rearing is easier and works better when people beyond the nuclear family cooperate. But why this points to a government role is never explained.

In fact, when the government is the village, the job of the parent is made harder. Thus, for example, Clinton correctly notes that the teaching of virtues is a critical

child-rearing task and laments how hard the task has become nowadays. But looking to government won't do the trick. Government schools can't teach virtues because government schools are required to play to the lowest common denominator. So we have values clarification instead of the teaching of substantive virtues. Children are encouraged to articulate what values they hold but not why they hold them or whether they are legitimate to hold.

If you want to read some good books on children, go get *Little House on the Prairie* by Laura Ingalls Wilder. Then go read *The Discovery of Freedom* by her daughter, Rose Wilder Lane, to see what child rearing without government intervention can produce. ®

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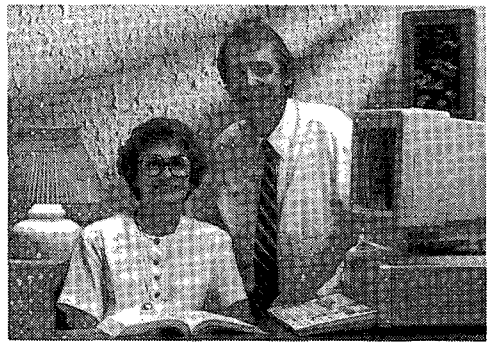
Disagreeable Truths

By Nick Gillespie

Telling the Truth: Why Our Culture and Our Country Have Stopped Making Sense—and What We Can Do About It, by Lynne V. Cheney, New York: Simon & Schuster, 256 pages, $23.00

ONE OF MY OLDEST FRIENDS IS A rat-commie bastard. We cross paths a few times a year and whenever we do, we argue incessantly about everything under the sun. Other than the fact that we are friends—that we seek out and enjoy one another's company—we have just about nothing in common. After a few minutes of catching up, we start slugging it out with little style and less poise, two flat-footed boxers pounding away at each other. He says the government spends too little on education; I say that the government spends far too much and shouldn't be involved in the first place. He thinks that the minimum wage should be raised; I think that it should be abolished. He claims that corporations own the government; I claim the government owns the corporations—and the rest of us, too. You get the picture.

We have a ritual that ends each session, one designed to congratulate ourselves on our civility and to mollify inflamed passions while yielding not one inch of ideological ground. "Well," one of us invariably says when it's time to hang up the phone or get some sleep, "I guess we're



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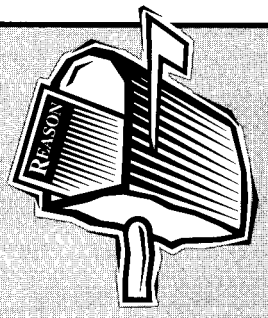

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Lynn Cheney: The former chairman of the National Endowment for the Humanities calls for nothing less that the intellectual equivalent of total war in the battle for "truth."

going to have to agree to disagree." My rat-commie bastard of a friend then invokes Voltaire: "I disapprove of what you say, but I will defend to the death your right to say it." I point out that Voltaire was no commie and turn to F.A. Hayek: "To live and work successfully with others...requires an intellectual commitment to a type of order in which, even on issues which to one are fundamental, others are allowed to pursue different ends." My friend notes that compared to Voltaire, Hayek was no wordsmith and the discussion is over.

But what does it mean—really—to agree to disagree? Can a free and open society tolerate all beliefs, all ideas, all speech? By definition, one assumes, it must. But Lynne Cheney, former head of the National Endowment for the Humanities and current fellow at the American Enterprise Institute, says no way. In fact, she opens her lively, engaging, and sometimes ridiculous polemic *Telling the Truth: Why Our Culture and Our Country Have Stopped Making Sense—and What We Can Do About It*, with an interesting quote on the matter from George Orwell, patron saint of freedom of thought: "Any attack on intellectual liberty, and on the concept of objective truth, threatens in the long run every department of thought."

Even while espousing absolute intellectual freedom, Orwell immediately places a condition on it: You can't attack "the concept of objective truth." So what if, in exercising your intellectual liberty, you begin to entertain doubts about the "concept of objective truth"? This is similar to puzzling over the limits of free speech. The First Amendment guarantees freedom of speech—including speech advocating the repeal of the First Amendment. Hence, a policy of free speech inherently gives a platform to its precise opposite. But if such subversive speech is disallowed, then what's the value of free speech? Questions like these are not easy nuts to crack and they are worth puzzling over in a liberal order.

CHENEY, A PH.D. IN ENGLISH, A FORMER chairman of the National Endowment for the Humanities, and a current fellow at the American Enterprise Institute, doesn't think so, especially regarding the "truth," a term much easier to invoke than it is to describe with any great clarity. Again using the Englishman as an authority, Cheney writes, "As George Orwell showed in *1984*, in a world where objective truth is denied, definitions become exceedingly slippery; and anything can mean almost anything else." The result of the "postmodern" rejection of objective truth is the breakdown of "culture" and "country" alluded to in her subtitle, writes Cheney, who calls for nothing less than the intellectual equivalent of total war in the battle for "truth." "The virtues that we have increasingly come to believe we must nurture if we are to be successful as a culture simply make no sense if we turn away from reason and reality. Thus, whether we as a society find the will to live in truth is more than a matter for idle speculation. The answer may very well determine whether we survive."

Telling the Truth casts a wide net and, to a degree, benefits from such tactics. The approach allows her to tackle such issues as grammar school curricula, political correctness, Oliver Stone's films, and

critical legal studies. Whatever the topic, her basic refrain is that what we *know* to be true is becoming hopelessly mingled with what we *want* to be true. Once that happens, she argues, "The idea of responsibility—of being accountable for one's actions—has no meaning in a world where there is neither truth nor reality, but only endless interpretation."

Cheney is at her best when engaging specific figures and texts rather than making broad, facile pronouncements about the state of American culture. In the chapter "From Truth to Transformation" for instance, she does a close reading of some writings by Michel Foucault, the French scholar whom Cheney rightly identifies as one of the very most influential postmodern thinkers.

She particularly takes issue with Foucault's treatment of Pierre Rivière, a 19th-century killer who murdered his brother, sister, and pregnant mother. In the early '70s, Foucault, with the help of his students at the Collège de France, published an edition of Rivière's memoirs along with trial transcripts, medical evaluations, depositions, and critical essays about the case. For Foucault, notes Cheney, "The depositions, testimony, and court briefs are important not for what they tell of the murders, but for what they show about the struggle to control the interpretation of the event: doctors battling with other doctors and with judges over whether Rivière was a criminal or a madman; the villagers of Aunay trying to put forward their version emphasizing the singularity of the event —and thus the unlikelihood of its being recreated."

Cheney hoists Foucault on his own petard. The documents, wrote Foucault, "form...a strange contest, a confrontation, a power relation, a battle among discourses and through discourses....I think the reason we decided to publish these documents was to draw a map, so to speak, of those combats, to reconstruct these confrontations and battles, to rediscover the interaction of those discourses as weapons of attack and defense in the relations of power and knowledge." But, as Cheney points out, Foucault's book "is about more than competing discourses. In an important way, it deconstructs itself because its authors prefer one of the discourses....They prefer to think of Rivière as he thought of himself: as the murdering hero....Wrote Foucault, 'We fell under the spell of the parricide with the reddish-brown eyes.'"

SIMILARLY POWERFUL IS HER CRITIQUE OF *Liberators*, a 1993 made-for-public-TV movie that purported to document the liberation of the Nazi concentration camp at Buchenwald by an African-American tank battalion. In the opening scene of the film, a concentration camp survivor re-

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turns to Buchenwald, accompanied by two black veterans. When the survivor breaks down, the vets comfort him. "The problem," says Cheney, "is that neither [vet] had ever been to Buchenwald before the filming of *Liberators*....How did this error happen? Given its magnitude, it seems improbable that it was an accident. More likely, rather significant license was taken for dramatic effect."

Cheney plausibly links the film's focus "on African-Americans helping free Jewish prisoners" to black-Jewish tensions in Crown Heights, Brooklyn in 1991. She quotes one of the co-hosts of a screening of the film at New York's Apollo Theater: "What we're trying to do is make New York a better place for you and me to live....There are a lot of truths that are very necessary. This is not a truth that's necessary." Cheney demurs, noting that one of the vets featured in the Buchenwald scene pointed out, "We had been stripped of our history in our slavery, and I didn't want to come up with anything that could tarnish our record." And as Cheney points out elsewhere, the falsification of history for "good" reasons often obscures the ways in which excluded or underrepresented groups actually did contribute to history.

Cheney laments that "feminist" attempts to end competition in schools substitutes jump rope for dodgeball. As if kids engaging in aerobically challenging play rather than beaning each other with rubber balls represents much of a threat to this sweet land of liberty.

This is *Telling the Truth* at its best. It engages other people's arguments or "truths" and presents plausible alternative arguments for one interpretation over another. It helps fill out a dialogue in which all participants, however opposed, can actually learn from one another.

UNFORTUNATELY, MUCH—I'M TEMPTED to say most—of *Telling the Truth* is not up to the level of the above examples and seems more like petty bickering. Sometimes, Cheney comes off less as the "disinterested" seeker of truth she claims to be and more as a political partisan. Hence, Cheney—a former Reagan administration member whose husband served as President Bush's defense secretary—is at very unconvincing pains to explain why Bush's breaking of his "no new taxes" pledge was less deceitful than Clinton's failing to deliver on a proposed middle-class tax cut.

At other times, Cheney proffers silly support for potentially sound points, as when she laments "the radical egalitarianism espoused by many feminists in the movement to do away with...competition in the schools." Among Cheney's evidence: "In every part of the country, school children are dancing and jumping rope, activities that do not involve competition, instead of playing games like dodgeball, from which a winner emerges." As if kids actually engaging in traditional, aerobically challenging playground sports rather than beaning each other with rubber balls represents much of a threat to this sweet land of liberty.

In a related way, Cheney is often in a rush to link every contemporary trend she abhors to postmodernism's insidious influence. The last few pages of *Telling the Truth*, for instance, are a dizzying whirlwind of innuendo and invective, especially when she invokes the brutal 1994 murder of a Philadelphia ice cream vendor as the necessary terminus of postmodern thought. After a young thug shot the vendor in an attempted robbery, a crowd of teenage onlookers laughed and danced as the vendor lay dying in the street.

Writes Cheney, "People who behave this way have obviously become desensitized to violence, probably because they

have seen so much of it. Columnist Bob Greene suggests that their insensitivity reveals a contemporary confusion of entertainment and reality. 'We [have] increasingly become a nation of citizens who watch anything and everything as if it is all a show,' he writes."

Cheney's linkage is implicit and unconvincing: Postmodernism leads to murder and mayhem. "People who laugh at a dying man have no sense that a stranger can suffer just as they do," continues Cheney. "They have lost the animating perception of compassion, the awareness, as Josiah Royce described it, that another person is 'just as real...as actual, as concrete, as thou art'....It is...evident that intellectual elites do no one a favor by sending through society messages that there is no external reality in which we all participate, that there is only the game of the moment, the entertainment of the day."

This sort of logic strikes me as muddled, tenuous, and tendentious. In her comments on Foucault, say, Cheney does an admirable close reading and carefully teases out implications; here, she merely substitutes assertion for argumentation. She knows nothing for sure about why those disturbing, laughing onlookers acted the way they did—or whether they are representative of American culture or postmodernism's influence on our society. Indeed, far from eschewing compassion and awareness for others, much of what goes under the rubric of postmodern thought explicitly attempts to (and often does) shed light on the history and experience of marginal groups and individuals.

SIMILARLY, POSTMODERN THEORISTS aren't playing "games" and "entertainments" in any trivial or careless way. They too are searching for the "truth"—even if their truth is precisely that there is no truth. Even as execrable a legal theorist as Catharine MacKinnon thinks she is accurately describing the objective world when, as Cheney summarizes, she claims, "that men define reality." When Foucaldians stress that all social arrangements reflect power relations, they think (rightly or wrongly) they are getting at the truth.

Cheney also mixes up "truths" that are demonstrably false (such as the *Liberators* film) with ones she dislikes or disagrees with (Foucault's lionization of Pierre Rivière). And she consistently conflates philosophical skepticism with extreme relativism. "Nor should we bow down to heavyhanded assertions about how there is no objectivity and thus no way to judge whether one way of doing a thing, be it educating the young or choosing a leader, is better or worse than any other," she writes. While it is true that most postmodernists (however defined) would agree that full objectivity is impossible to achieve, the second part of her statement hardly follows. In fact, Cheney's own book details, usually with horror, the intellectual and political prescriptions of postmodern thought. Postmodernists, just like conservatives, have their methods of evaluation and preferred agendas.

These criticisms perhaps get at the heart of the problem with *Telling the Truth*. Cheney has framed the issue so that there is really no way to disagree with her and still be "living in truth" (as she titles her final chapter), much less be granted equal intellectual respect. Even as she grants the quintessentially postmodern insight that "imperfect as we are, we can never hope to know [truth] fully or possess it completely," Cheney insists, "encountering postmodernists at work, we must not lose sight of how offensive their assumptions are, how condescending to those who seek knowledge." In her world, there seems to be no way to agree to disagree.

This is partly a testament to Cheney's skills as a polemicist and an indication of just how seriously she views her subject (and, to her credit, she never contemplates state control or censorship in any way, shape, or form). She is mounting her best attack in this battle of wits, and, as in any other contest, it makes sense to try to knock your opponents out of the ring altogether.

But such a strategy is somewhat troubling, too, whether utilized by right-wingers or left, conservatives or liberals, pre-modernists or post—especially in the absence of an explicit affirmation of a Voltairean social order in which the intellectual arena is open *especially* to unpopular viewpoints and ideas. After all, one of the things that Cheney and others hate about "political correctness" is that it attempts to brand dissent as unacceptable. In truth, "progress" in a liberal society comes not so much from deeming certain ideas off limits, but by letting them be debated vigorously and openly. If we cannot agree to disagree, there is indeed very little common ground left to share and very little of substance left to discuss. R

Nick Gillespie (NGilles123@aol.com) is a senior editor of REASON.

With Good Intentions

By Susan Lee

The Good Life and Its Discontents: The American Dream in the Age of Entitlement, by Robert J. Samuelson, New York: Times Books, 274 pages, $25.00

ROBERT SAMUELSON, LONG-TIME columnist for *Newsweek* and *The Washington Post*, is not a timid person. His columns confront issues head-on and his voice, while curmudgeonly, takes its tone from the numbers. His first book, *The Good Life and Its Discontents*, will not disappoint his fans. (And—full disclosure—I'm one of them.)

Stated baldly, Samuelson's message is stern. It runs like this: The postwar era has been a period in which Americans demanded more and more "things" from their government; they *felt* entitled to a

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pampered life where jobs were secure, lucrative, and fulfilling, where social relations were characterized by harmony and equality, and where good health and excellent education were guaranteed. Simply put, Samuelson charges that we transformed the American dream into a fantasy, and that the road back to reality requires that we ask less of government and more of ourselves.

That's the argument. And by the time Samuelson is done making it, it's hard to disagree.

The anti-government sentiment so clear in the 1994 congressional election is, to Samuelson, an abstract expression of frustration—a grumble from the disillusioned public. It is not a specific and desired goal.

The Good Life and Its Discontents spends a rather long time looking at the causes of this feeling of entitlement. Essentially, the foundation was laid in the 1950s when Americans overcame their Depression anxiety and started to take prosperity for granted. That, in turn, expressed itself in something Samuelson calls the New Capitalism—a partnership between government and big corporations dedicated to taming the business cycle.

Samuelson points out that because new technologies, novel products, and more efficient processes grow out of turbulence and uncertainty, business cycles and corporate failure are the central characteristics of a market economy. Unfortunately, these economic ups and downs are unsettling and often punishing. Thus, according to Samuelson, the attempt to smooth out these repeated upheavals became an attempt to guarantee perpetually expanding prosperity.

The New Capitalism, then, led directly to the politics of overpromise—the government reflex to make more commitments than it can fulfill. In this view, the politics of overpromise flowed naturally from the belief that an ever-expanding economy would generate the income that government needed to satisfy its new commitments.

And finally, Samuelson describes how casting the government into a role of economic omnipotence made it an easy choice to become the instrument for achieving social equality. The difficulty of this role, however, was not so much that it was inappropriate, but that the definition of equality has become a moving target. Its requirements ballooned as many groups—blacks, women, gays, Hispanics, welfare recipients, the disabled, prisoners, and so forth—began to insist on new "rights" that, unlike old-fashioned political rights such as access to the polls and public institutions, were actually wealth-redistribution mechanisms. So, too, health care and education became candidates for achieving equality. The creation of all these synthetic rights then became another form of entitlement.

SAMUELSON IS THRILLINGLY CONTEMPTUOUS of both the Keynesian conceit that government can manage the economy to produce seamless growth and constantly rising living standards and the cult of management that holds that a good manager is all it takes to run any business into effortless corporate largesse. He describes how the combination of government overcommitment and the failure of the economy to generate larger and larger tax revenues resulted in huge federal budget deficits. And he shows how the singular emphasis on management produced firms that were top-heavy with bureaucrats and too rigid to respond to new competition. As for the expanding definition of equality, Samuelson says simply that it "blurred the boundary between equality of opportunity and equality of results."

The net result of all this is that having expected the impossible, Americans are now crabby and disillusioned with what

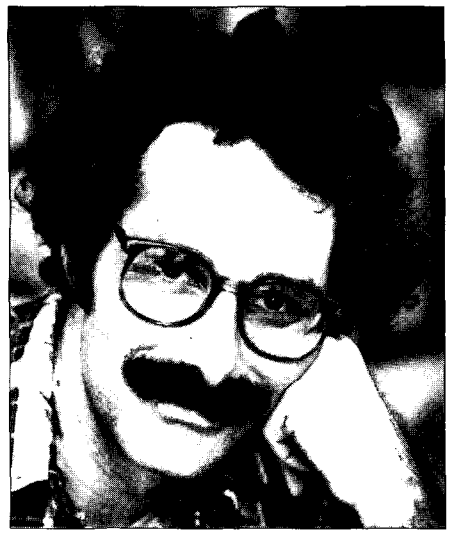
they have. Rather than appreciating the distance they've come in the past 35 years, Americans focus on what is wrong. And, finding plenty that falls short of perfect, they have become disenchanted with government and its leaders.

Samuelson argues that this crabbiness is a signal that the age of entitlement is ending. Although he refuses to forecast the next stage, he does offer his view of what ought to come next—lower expectations and more personal responsibility. This responsibility is surgically dissected: It means making choices, recognizing limits and clarifying accountability. Responsibility means taking life's lumps without running to government for rescue. Responsibility is tough and unpleasant.

As a way of reasserting a standard of discipline, Samuelson picks, first and foremost, balancing the federal budget: "Government services worth having ought to be worth paying for in taxes. ...Gain and pain ought to be calibrated," says Samuelson. (And in his trademark, no-nonsense way, he trots out some real numbers and actual ideas to show how this can be done; ditto for solving the longer-term problems of Social Security and Medicare by cutting costs.)

Austere? You bet. Yet honest readers will probably not find this austerity threatening because Samuelson painstakingly builds his case and refrains from the usual, divisive rhetoric of most public policy books. (He abstains, for example, from categorizing ideas and people with terms like *liberal* and *conservative*.) In the end, this restrained tone and leisurely pace takes the sting out of what is, after all, a severe chastisement of American indulgence and petulance.

But let's say Samuelson has correctly called a turn in American thinking and that the age of entitlement is drawing to a close. And let's say his vision of more reasonable expectations and greater personal exertion prevails. What then does he see as the rewards of taking ourselves in hand? Samuelson is unremitting to the end. It will not repeal Big Government. Why?



Robert Samuelson: He charges that we transformed the American dream into a fantasy, and that the road back to reality requires that we ask less of government and more of ourselves.

Because, he says, there is no public demand to do so. The anti-government sentiment so clear in the 1994 congressional election is, to Samuelson, an abstract expression of frustration—a grumble from the disillusioned public. It is not a specific and desired goal.

Well, here I think he is wrong. Of course there will continue to be a constituency for government to take on utopian tasks and function as the ultimate provider. And of course there will continue to be people who eschew responsibility for personal failures. But most people realize that the age of entitlement and the big government that promoted it have been a total flop.

More important, many people accept the fact that life requires tradeoffs and feel that the tradeoff involved in endowing the government with too much power is an unacceptable loss of individual power. Without putting too fine a point on it, I would guess that's not the sort of belief that is likely to evaporate just because government benefits are cut back and a little personal fortitude is required. R

Susan Lee (sclee12@aol.com) is an economist and the author of the book Hands Off: Why the Government is a Menace to Economic Health, *to be published by Simon & Schuster in April.*

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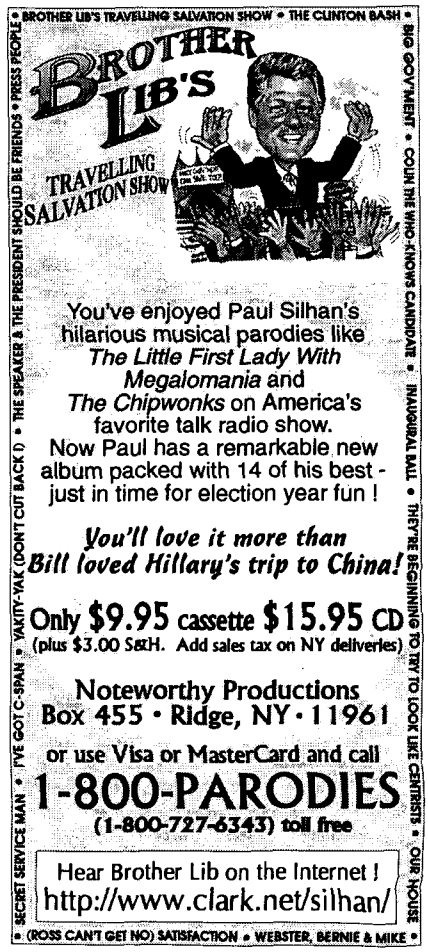
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Artistic License to Kill

By Thomas W. Hazlett

Finally, a case for funding the arts

FOR YEARS I HAVE BEEN DAYdreaming about concocting a brilliant, market-oriented, democratically sensible, intellectually honest, morally credible case for subsidizing the arts. The vicious rap, which I aim to defeat, is that the National Endowment for the Arts is just a plaything of the Hollywood elite, with their big-budget extravagances and their low-budget morals. That sounds like a party I'd like to go to. If only I could negotiate some subtle defense for the transfer of public funds to High Culture, I would be feted as a hero of the Rich & Famous. Leggy supermodels, back off.

Now, thanks to one Frank Rich, my fantasy may fizzle into just so many champagne wishes. The dramatic editorialist for the esteemed *New York Times* has angrily denounced what is surely the most popular whipping boy since Michael Fay: movie moguls. Railing against the "entertainment industry's shameful refusal to make good on its debt to the National Endowment for the Arts at its time of greatest need," Rich waxes poetic about the tragedy of budget cuts. What was recently an annual allowance of $162 million has been scaled back to $99.5 million.

The Hollywood credits which Rich finds missing are these: "For years movie studios and TV networks have used N.E.A.-supported institutions...the way they once used Schwab's drugstore: as pickup spots for new talent." While the drugstore might have been the cheaper solution for U.S. taxpayers, there is no doubt something nobler about federal funding. Yet Hollywood, which owes the NEA for inputs into its multibillion-dollar profit stream, is not willing to lift a political pinky to defend it. Where, oh where, asks Mr. Rich, are the Hollywood pressure groups to speak out on federal aid to show biz?

This is the most straightforward defense of corporate welfare yet to surface in this great land we call America; if only Frank Capra were here to turn an NEA grant into a box office extravaganza: *Mr. Spielberg Goes To Washington.*

In fact, notes Rich, an interesting solution to the death of this federal incubator of artistry was broached by the NEA's leading lady, Jane Alexander. "She has proposed that a [pending] bill extending the copyright period—and thus the potential royalties—for authors turn back some of this new income to the Arts Endowment." This introduces the dangerously unbalanced notion that those who reap NEA benefits (and, of course, everyone else who writes) should foot NEA costs.

Alas, the Hollywood interests sprang to life, producing boffo special effects in the halls of legislative process. And the proposal that they pay the freight has already met with a smashing fate, one that will soon be coming to a theater near you: *Friday the 13th: Jason's Roll Call.*

Of course, the NEA subsidy is a pittance. The annual budget won't likely cover Madonna's next wardrobe allowance—which, when you think about it, typically doesn't cover much itself. A hundred million dollars is a joke when compared to the billions spent on television and motion pictures; the fledgling cable TV industry alone hauls in $25 billion annually. Parks, high schools, symphony orchestras, and civic organizations spend many multiples of this paltry federal sum in organizing local plays, concerts, and other positive alternatives to the target-practice and sword-tossing crafts which so many of America's outstanding public education establishments increasingly specialize in.

But the magnitude rationale is a coward's way out: The principle question is principal. Should the poor bastard have to pay? Rich, descending to the level at which opponents of NEA funding are routinely sprayed and dispersed, quotes a fellow traveler as denouncing "the demonization of the N.E.A. by the religious right and its congressional patrons [with] 'the most vicious onslaught on the arts since the McCarthy years.'"

Certainly the working stiff has tastes which are excited more by, say, NFL football or the Fox fall lineup than the Mapplethorpe exhibit. But does one have to be Jesse Helms to blanch at the tableau of tax-and-spend? Won't the view from High Ethical Ground focus like a laser on the morality of taxing Bubba to pay Meryl Streep? On imposing the state's preferences for expression by funding some projects and defunding others? On whether we punish God by steadfastly opposing government subsidies for religion, or honor him by protecting the freedom to worship?

In the end, the battle is over cash—not art. Dollars for divas is not about the stimulus provided culture, whose health or demise will proceed with nary a federally funded aspirin. But performance art being where you find it, "here, here" to the culturato who has plopped before us an elegant mega-truth: "The conspicuous gap between the entertainment industry's huge debt to the nonprofit arts world," writes Rich, "and its dilettantish efforts on that endangered world's behalf is the sort of ideological disconnect that gives Hollywood liberalism a bad name."

At long last—my profound and compelling argument for government subsidization of the arts. ℜ

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu), an economist at the University of California at Davis, is a visiting scholar at the American Enterprise Institute.

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